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# TEXAS REGISTER

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Happy New year's



Harmony Dement  
3rd Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.  
<http://www.sos.state.tx.us/texreg>

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is <http://www.oag.state.tx.us>. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site.  
<http://www.state.tx.us/Government>

...

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for January 12, 2004

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2009, John G. Dickerson, III of Bay City (replacing Authur Milberger of Bay City whose term expired).

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2009, Katura Morgan Carlton of La Grange (replacing Gale Lincke of La Grange whose term expired).

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2009, Clayborne L. Nettleship of San Saba (replacing Patricia Kirk of San Saba whose term expired).

Appointed to the Texas State Library and Archives Commission for a term to expire September 28, 2009, Cruz G. Hernandez of Burleson (pursuant to SB 287, 78th Legislature, Regular Session).

Appointed to the Texas State Library and Archives Commission for a term to expire September 28, 2009, Martha Doty Freeman of Austin (replacing Kenneth Carr of El Paso whose term expired).

Appointed to the Texas State Library and Archives Commission for a term to expire September 28, 2009, Sandra J. Pickett of Liberty (Ms. Pickett is being reappointed).

Appointed to the Texas Commission on the Arts for a term to expire August 31, 2009, Michelle Bain of Houston (replacing Celso Gonzalez-Falla of Corpus Christi whose term expired).

Appointed to the Texas Commission on the Arts for a term to expire August 31, 2009, Nelson H. Balido of San Antonio (replacing Tony Chauveaux of Beaumont whose term expired).

Appointed to the Texas Commission on the Arts for a term to expire August 31, 2009, William W. Collins, Jr. of Fort Worth (replacing Kathleen Stevens of Fort Worth whose term expired).

Appointed to the Texas Commission on the Arts for a term to expire August 31, 2009, Carol L. "Kelli" Questrom of Dallas (replacing Sue Bancroft of Argyle whose term expired).

Appointed to the Texas Commission on the Arts for a term to expire August 31, 2009, George R. Snead of El Paso (replacing Catherine Taylor of Midland whose term expired).

Appointed to the Texas Commission on the Arts for a term to expire August 31, 2009, Mary Hardie Teeple of Spicewood (replacing C. Anthony Sherman of Missouri City whose term expired).

Designating Claudia Ladensohn of San Antonio as Presiding Officer of the Texas Commission on the Arts for a term at the pleasure of the Governor. Ms. Ladensohn will replace Tony Chauveaux as presiding officer. Mr. Chauveaux no longer serves on the board.

Designating Ray A. Wilkerson of Austin as Presiding Officer of the Lower Colorado River Authority for a term at the pleasure of the Governor. Mr. Wilderson is being named Presiding Officer pursuant to SB 1935, 78th Legislature, Regular Session.

Appointed as Assistant Adjutant General for the Army for a term at the pleasure of the Governor, General William W. Goodwin of Austin.

Appointed as Assistant Adjutant General for the Air for a term at the pleasure of the Governor, General Allen R. Dehnert of Austin.

Rick Perry, Governor

TRD-200400200





# THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

## Request for Opinions

### RQ-0149-GA

#### Requestor:

Mr. John A. Wells, Executive Director  
Texas Military Facilities Commission  
2200 West 35th Street, Building 64  
Austin, Texas 78703-1222

Re: Whether the Texas Military Facilities Commission may make a lump sum payment to a terminated employee for accumulated sick leave (Request No. 0149-GA)

**Briefs requested by January 27, 2004**

### RQ-0150-GA

#### Requestor:

Mr. Robert Scott  
Chief Deputy Commissioner  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Re: Liability of school district employees for the use of physical force against a student (Request No. 0150-GA)

**Briefs requested by January 27, 2004**

### RQ-0151-GA

#### Requestor:

Mr. Robert Scott  
Chief Deputy Commissioner  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Re: Whether a public school teacher may be awarded additional compensation under section 28.053, Education Code (Request No. 0151-GA)

**Briefs requested by February 5, 2004**

### RQ-0152-GA

#### Requestor:

The Honorable Mike Stafford  
Harris County Attorney  
1019 Congress, 15th Floor  
Houston, Texas 77002-1700

Re: Whether a juvenile board may designate the Juvenile Probation Department as the office authorized to determine whether to defer prosecution of a child referred to juvenile court for minor offenses (Request No. 0152-GA)

**Briefs requested by February 5, 2004**

### RQ-0153-GA

#### Requestor:

The Honorable Tim Curry  
Tarrant County Criminal District Attorney  
401 West Belknap  
Fort Worth, Texas 76196-0201

Re: Refund of costs required to be paid by a surety under section 41.258(b), Government Code, when the state declines to prosecute a criminal defendant (Request No. 0153-GA)

**Briefs requested by February 12, 2004**

### RQ-0154-GA

#### Requestor:

The Honorable Ben W. "Bud" Childers  
Fort Bend County Attorney  
301 Jackson Street, Suite 728  
Richmond, Texas 77469-3108

Re: Redaction of social security numbers by a county clerk pursuant to an order of the county court-at-law judges (Request No. 0154-GA)

**Briefs requested by February 12, 2004**

### RQ-0155-GA

#### Requestor:

The Honorable Bill R. Turner  
Brazos County District Attorney  
Bryan, Texas 77803

Re: Whether the Bryan Business Council, Inc., is subject to the Open Meetings Act (Request No. 0155-GA)

**Briefs requested by February 12, 2004**

**RQ-0156-GA**

**Requestor:**

The Honorable Jane Nelson  
Chair, Health and Human Services Committee  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

Re: Consequences for a municipality if five of its seven city council members are removed by a recall election (Request No. 0156-GA)

**Briefs requested by February 12, 2004**

**RQ-0157-GA**

**Requestor:**

The Honorable Rodney Ellis  
Chair, Committee on Government Organization  
Texas State Senate  
P.O. Box 12068

Austin, Texas 78711

Re: Residency requirements for voting in an election in Texas (Request No. 0157-GA)

**Briefs requested by January 23, 2004**

**RQ-0158-GA**

**Requestor:**

The Honorable Frank J. Corte, Jr.  
Chair, Committee on Defense Affairs and State-Federal Relations  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Re: Whether the Texas Department of Health is required to adopt minimum standards for abortion facilities under chapter 245 of the Texas Health and Safety Code (Request No. 0158-GA)

**Briefs requested by February 13, 2004**

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us). or call the Opinion Committee at 512/463-2110.*

TRD-200400231  
Nancy S. Fuller  
Assistant Attorney General  
Office of the Attorney General  
Filed: January 14, 2004

◆ ◆ ◆

# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

#### CHAPTER 303. REGISTRATION SUBCHAPTER C. REGISTRATION OF THIRD-PARTY INSPECTORS

**10 TAC §§303.200, 303.205, 303.210, 303.215, 303.220,  
303.225, 303.230, 303.235**

The Texas Residential Construction Commission (the "commission") adopts on an emergency basis new rules at Title 10, Part 7, Chapter 303, Subchapter C, §§303.200, 303.205, 303.210, 303.215, 303.220, 303.225, 303.230 and 303.235 regarding the registration and qualification of third-party inspectors who take part in the state-sponsored inspection and dispute resolution process described in Title 16, Property Code.

The rules are adopted on an emergency basis to comply with new legislation, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01). The new rules are adopted under new Chapter 427, Property Code (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), which provides in part that third-party inspectors that take part in the state-sponsored inspection and dispute resolution process must be registered with the state and must meet certain statutory qualifications to serve. The adoption of the emergency rule permits the commission to comply with the timetable prescribed by House Bill 730 and set out in Title 16, Property Code.

The statutory provisions affected by the emergency adoption are those set forth in the Title 16, Property Code and House Bill 730, 78th Legislature.

No other statutes, articles, or codes are affected by the adoption.

#### §303.200. Inspector Registration.

(a) Beginning on February 17, 2004, the commission shall register two types of third-party inspectors to participate in the state-sponsored inspection and dispute resolution process.

(b) The commission shall register:

(1) persons who qualify under the Act to serve as inspectors on issues involving workmanship and materials; and

(2) persons who qualify under the Act to serve as inspectors on issues involving a structural matter.

(c) In addition to reviewing other qualifications for persons seeking to serve as a third-party inspector under this subchapter, the commission shall conduct a criminal background check on each person who seeks to register under this subchapter.

(d) The commission shall promptly notify persons who meet all of the qualifications required to serve as an inspector under this subchapter and shall provide registered inspectors with evidence of registration, which shall remain effective for at least one year from the effective date as determined by the commission, unless otherwise revoked.

#### §303.205. Application.

(a) A person seeking to register with the commission as a third-party inspector in order to participate in the state-sponsored inspection and dispute resolution process must submit a completed application on a commission-prescribed form accompanied by the appropriate fee.

(b) A person may register with the commission to serve as both a workmanship and materials inspector and a structural inspector. The person seeking to serve as both a workmanship and materials inspector and a structural inspector must qualify under the Act to serve as both.

(c) A person who seeks to register as a third-party inspector for issues related to workmanship and materials shall:

(1) provide evidence that the person has acquired a minimum of five (5) years of experience working in the field of residential construction;

(2) provide evidence that the person holds a current ICC certification as a residential combination inspector;

(3) attest that the person has not received more than ten (10) percent of the person's gross income, as reported on the last federal income tax return filed by that person, from providing expert witness services, including retention for the purpose of providing testimony, evidence, or consultation in connection with a pending or threatened legal action, less any fees for expert witness services, including providing testimony or evidence in a threatened legal action, received by that person when in conjunction with service in the capacity of a certified third party inspector; and

(4) provide other information requested by the commission that the commission has determined is necessary to assess the applicant's qualifications and fitness to serve as a third-party inspector under this subchapter.

(d) A person who seeks to register as a third-party inspector for issues involving a structural matter shall:

(1) provide evidence that the person is a state-licensed professional engineer or a state-licensed architect;

(2) provide evidence that the person has acquired a minimum of ten (10) years of experience working in the field of residential construction;

(3) attest that the person has not received more than ten (10) percent of the person's gross income, as reported on the last federal income tax return filed by that person, from providing expert witness services, including retention for the purpose of providing testimony, evidence, or consultation in connection with a pending or threatened legal action, less any fees for expert witness services, including providing testimony or evidence in a threatened legal action, received by that person when in conjunction with service in the capacity of a certified third party inspector; and

(4) provide other information requested by the commission that the commission has determined is necessary to assess the applicant's qualifications and fitness to serve as a third-party inspector under this subchapter.

§303.210. Determination of Qualifications and Fitness.

(a) In reviewing an application to determine if an applicant is fit to carry out the duties of serving as an inspector under this subchapter, the commission shall consider among other things, whether the applicant has a criminal history and if so:

(1) the nature and seriousness of any crimes for which the applicant has a prior conviction;

(2) the extent to which service as a registered inspector might offer an opportunity to engage in further criminal activity of a same or similar nature as that for which the applicant has a prior conviction;

(3) the extent and nature of the applicant's past criminal activity;

(4) the age of the applicant when any criminal activity discovered occurred;

(5) the remoteness in time between the submission of the application and the date of the applicant's last criminal conviction;

(6) the applicant's overall work history in relation to the dates of any criminal convictions;

(7) evidence of the applicant's successful rehabilitation efforts while incarcerated or after release, including but not limited to, restitution to the victim, completion of probationary requirements and completion of community service; and

(8) other evidence of the applicant's fitness to serve as a third-party inspector, as requested by the commission.

(b) An applicant must respond to a commission request for evidence of fitness to serve as a third-party inspector in order to complete the application process.

§303.215. Training.

(a) The commission shall develop an initial training program for third-party inspectors who conduct inspections under the Act.

(b) Persons registered as third-party inspectors must complete the commission-developed training prior to participation in the state-sponsored inspection and dispute resolution process.

§303.220. Material Change in Information.

Each person who is registered as a third-party inspector under this subchapter shall report to the commission in writing any material change in the information provided to the commission pursuant to this subchapter within thirty (30) days of the change.

§303.225. Renewal.

(a) A registered third-party inspector shall annually renew the inspector's registration not later than thirty (30) days prior to the expiration of its effective period as determined by the commission.

(b) A registered third-party inspector shall re-file for renewal on a commission-prescribed application accompanied by the appropriate fee as adopted by the commission.

§303.230. Denial of Registration.

(a) The commission shall deny an application for registration if the commission determines that the applicant is not qualified or fit to carry out the duties of serving as a third-party inspector under this subchapter.

(b) The commission shall deny any application for registration under this subchapter if the applicant has a criminal conviction and if the crime for which the person was convicted would negatively affect the person's fitness to carry out the duties of serving as a third-party inspector under this subchapter.

(c) If the commission denies an application for a registration, the commission shall provide written notice detailing its reason(s) for denial to the applicant not later than the 15th day after the date the commission receives the completed application and fee.

§303.235. Appeal of Denial.

An applicant who is denied an application under this subchapter may appeal that decision to the Executive Director within ten business days of receipt of the notice that the application was denied.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 9, 2004.

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Susan Durso

General Counsel

Texas Residential Construction Commission

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For further information, please call: (512) 463-9524



## **CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)**

### **10 TAC §§313.1 - 313.23**

The Texas Residential Construction Commission (the "commission") adopts on an emergency basis new rules at Title 10, Part 7, Chapter 313, §§313.1 - 313.23, regarding the state-sponsored inspection and dispute resolution process as provided for in Title 16, Property Code and in Property Code Chapter 27, as amended by House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01).

The rules are adopted on an emergency basis to comply with new legislation, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01). The new rules are adopted under new §408.001, Property Code, Title 16, Subtitle D., Chapter 426, Property Code and Chapter 27 Property Code as amended by House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), which provide authority to the commission to adopt rules necessary to implement Title 16, Property Code, and that establish the state-sponsored inspection and dispute resolution

process for resolving disputes between builders and homeowners. The adoption of the emergency rules permits the commission to comply with the timetable prescribed by House Bill 730 and set out in Title 16, Property Code.

The statutory provisions affected by the emergency adoption are those set forth in the Title 16, Property Code, Chapter 27 Property Code and House Bill 730, 78th Legislature.

No other statutes, articles, or codes are affected by the adoption.

§313.1. Purpose.

The process described in this chapter applies to a dispute arising from a transaction governed by the Act in which there is a claim resulting from alleged construction defect(s), which accrued after September 1, 2003, other than a claim solely for personal injury, survival, wrongful death or damage to goods. The filing of a request under this chapter is a prerequisite to the homeowner initiating an action for damages or other relief in response to alleged construction defect(s).

§313.2. Time for Filing a Request.

A person must file a request to initiate the SIRP:

(1) on or before the second anniversary of the date of the discovery of the conditions claimed to be evidence of a construction defect(s), but not later than the thirtieth day after the date that any applicable warranty period expires; and

(2) on or before the tenth anniversary of the date of the initial transfer of title from the builder to the initial owner of the affected home, or the improvement that is the subject of the dispute or the date on which the contract for construction of the improvement was entered, if there is not a closing.

§313.3. Notice to Builder.

(a) Prior to initiating the SIRP, a homeowner must give a builder a minimum of thirty (30) days written notice of any alleged construction defect(s).

(b) If a homeowner submits a request for inspection to the commission prior to providing the builder with the notice and inspection opportunity provided in this section, the commission shall return the request to the homeowner as incomplete.

§313.4. Builder's Right to Inspect.

(a) After notice has been provided in accordance with §313.3, if requested by the builder, the homeowner must provide the builder or its designated consultants a reasonable opportunity to inspect the affected home.

(b) In addition to the right to inspect under subsection (a) of this section, at any time after the request to initiate the SIRP has been filed with the commission and prior to the conclusion of the SIRP, and upon written request from the builder, a builder shall be given a reasonable opportunity to inspect the affected home, or to have the home inspected, to determine the nature and cause of the alleged construction defect(s) and the nature and extent of repairs necessary to remedy the alleged construction defect(s).

(1) The builder may take reasonable steps during the inspection to document the alleged construction defect(s) and the condition of the home.

(2) If the homeowner delays the inspection for more than five (5) days after receipt of the builder's request to inspect under this subsection, any period for subsequent action to be taken by the builder or a registered third-party inspector shall be extended one day for each day the inspection is delayed after the fifth day.

§313.5. Initiating the SIRP.

(a) No earlier than the thirtieth day after a homeowner has given a builder written notice of alleged construction defect(s), either the homeowner or the builder may initiate the SIRP by filing with the commission a request for a third party inspection.

(b) If the affected home is not registered with the commission pursuant to Part 7, Chapter 303, Subchapter B, of this Title, at the time the request is made, the requesting party must simultaneously register the home with the commission on a commission-prescribed form, accompanied by the appropriate fee, with filing the request.

§313.6. Required Information.

(a) The request shall be submitted on a commission-prescribed form and must include:

(1) a description of the transaction giving rise to the dispute;

(2) evidence that the homeowner provided the builder with written notice of the alleged construction defect(s) or that the builder received notice of the alleged construction defect(s) at least thirty days prior to filing the request;

(3) a general description of the builder's response to notice of the alleged construction defect(s), and if any portion of the builder's response was provided in writing, a copy of that response;

(4) a description in reasonable detail of the alleged construction defect(s);

(5) a listing of the names and addresses of all professionals or other persons that have inspected the alleged construction defect(s) on behalf of the party requesting the inspection and that have prepared any written materials regarding their inspection, if any;

(6) an itemization of the amounts of any known out-of-pocket expenses and engineering or consulting fees incurred by the homeowner in connection with the alleged construction defect(s); and

(7) any evidence that depicts the nature and cause of the alleged construction defect(s), the nature and extent of repairs necessary to remedy the alleged construction defect(s), including, if available, expert reports, photographs and video tapes, if that evidence would be discoverable under Texas Rules of Civil Procedure 192.

(b) With regard to information provided under subsection (a)(4) of this section, the party making the request must submit the name of any person who inspected the home in connection with the alleged construction defect(s) that is the subject of the request on behalf of the requestor prior to the request being made. Failure to disclose the name of a person who has performed such an inspection, if known to the requestor at the time of the request, could prohibit the requesting party from later designating the person who performed the inspection as an expert or from using any materials prepared by such person performing the inspection in the SIRP or any action arising out of any alleged construction defect(s) that is the subject of the request.

§313.7. Notice of the Request.

The party who initiates the SIRP by filing a request shall send notice of the request, including a copy of the request and all information submitted to the commission with the request, to all other interested parties by certified mail, return receipt requested.

§313.8. Inspection fees.

(a) The request to initiate the SIRP shall be accompanied by the appropriate filing and inspection fees established by the commission.

(b) The commission will establish fees that are commensurate with the scope of the requested inspection and the type of construction defect(s) alleged.

(c) A homeowner who is able to show financial need may request a reduction or waiver of the home inspection fees. To make such a request, the homeowner must file with the request for an inspection a sworn affidavit of inability to pay costs on a commission-prescribed form. The Executive Director will review the request and approve it or deny it. The Executive Director's decision on such a request is a final agency decision not subject to further administrative appeal.

§313.9. Initial Request Review.

(a) Upon receipt of a request for inspection the commission shall review the request to determine:

(1) that the dispute arises from a transaction governed by the Act;

(2) that the request is complete, including required attachments and the payment of the appropriate fees;

(3) that the affected home is registered with the commission;

(4) that the alleged construction defect(s) accrued on or after September 1, 2003;

(5) that the request is timely under §313.2; and

(6) that the request involves a dispute between a homeowner and a builder regarding an alleged construction defect(s), and is not:

(A) a claim solely for personal injury, survival, wrongful death or damage to goods, which do not include damage to a home; or

(B) a claim for an alleged violation of Section 27.01, Business & Commerce Code, regarding Fraud in Real Estate and Stock Transactions; or

(C) a claim based solely on a builder's wrongful abandonment of an improvement project before completion; or

(D) a claim for an alleged violation of Property Code, Chapter 162, regarding Construction Payments, Loan Receipts, and Misapplication of Trust Funds.

(b) If the commission determines that the request is not complete, that the claim is or that the claim is not subject to the SIRP, the commission shall so advise the homeowner and builder in writing, specifying in detail the reason(s) why the request is not complete.

§313.10. Appointment of Third-Party Inspector.

(a) After a determination that the request is based on a claim within the jurisdiction of the commission's SIRP and within fifteen (15) days of receipt of the complete request and fee, the commission shall appoint a third-party inspector to conduct an inspection.

(b) The commission shall appoint the next available third-party inspector from the list of registered third-party inspectors maintained by the commission, who performs inspections in the affected home's geographic region and who has been qualified by the commission to perform the type of inspection required for the construction defect(s) alleged.

§313.11. Objection to the Third-Party Inspector Appointed.

(a) The commission shall notify the homeowner and builder in writing of the appointment of the third-party inspector. Within three (3) business days of receipt of notice of the commission's appointment, each party shall have the opportunity to object to the third-party inspector appointed, with or without stating a cause, and shall notify the commission in writing of the objection. Written notice under this section can be transmitted by mail, facsimile or electronic transmission.

(b) Each party shall have only one opportunity for each request submitted to the commission to object to the third-party inspector appointed.

(c) Failure to timely notify the commission that a party objects to the third-party inspector appointed will serve as waiver of that party's right to object unless the party is able to show that it has acquired material information that provides the basis for the objection that could not reasonably have been discovered prior to the expiration of the objection period.

(d) Following receipt of a party's objection, the commission shall appoint the next available third-party inspector from the list of registered third-party inspectors maintained by the commission, who performs inspections in the home's geographic region and who has been qualified by the commission to perform the type of inspection required for the construction defect(s) alleged, and shall notify the interested parties of the appointment.

§313.12. Home Inspection.

(a) If the commission has not received a written objection to the third-party inspector appointed pursuant to §313.11, the commission shall forward to the appointed third-party inspector a copy of the request for inspection and all supporting documentation submitted with the request.

(b) As soon as practicable after appointment, the appointed third-party inspector shall contact the homeowner and arrange a mutually convenient time to visit the home. The third-party inspector shall notify the builder and the homeowner of the date and time of the inspection. The homeowner and builder, including any of their consultants or representatives, may be present at the inspection.

(c) During the home inspection the third-party inspector shall not:

(1) take testimony; or

(2) create, or permit the creation of a written, audio or video recording of the inspection by any party or party's representative.

(d) The third-party inspector shall gather all information and other data that the third-party inspector, in his sole professional judgment, deems relevant to the inspection and shall gather it by any reasonable means including taking photographs and interviewing the homeowner, the builder, and any consultants present. An interview under this subsection may take place outside the presence of others not aligned with the party subject to the interview.

(e) The third-party inspector may suspend the inspection if a party interferes with the inspection in such a manner as to prohibit the third-party inspector from performing his duties in an impartial and professional manner.

(f) The third-party inspector shall not engage the services of any consultant.

(g) The builder shall submit to the third-party inspector for his consideration any written documentation generated as a result of having received a notice of a request for home inspection.

§313.13. The Third-Party Inspector's Report.

(a) If the alleged construction defect(s) described in the request involve workmanship and materials but not including a structural matter, the third-party inspector shall issue a report not later than the 15th day after the date the third-party inspector is appointed by the commission. The report shall set forth the third-party inspector's findings based on applicable warranty and building and performance

standards and shall include the third-party inspector's recommendation for repairs, if any.

(b) If the alleged construction defect(s) described in the request involve a structural matter, the third-party inspector shall inspect the home not later than the 30th day after the date the complete request is submitted, and shall issue a report with recommendations not later than the 60th day after the date the third-party inspector is appointed by the commission, unless the third-party inspector or a party to the dispute requests additional time, which is approved by the commission. The report shall set forth the third-party inspector's findings based on applicable warranty and building and performance standards; and shall include the third-party inspector's recommendation for repairs, if any.

(c) Third-party inspectors shall consider a range of repair or remediation options to address the alleged construction defect(s).

(d) A party to the dispute or the third-party inspector may request additional time to complete the inspection, including requesting additional time to conduct further testing. Upon a showing that there is good cause for an extension the commission shall grant additional time to complete the inspection.

(e) A third-party inspector may not include in its report a recommendation for payment of monetary damages, a price for the repairs recommended, or a determination of the value of any loss allegedly suffered by the homeowner.

#### §313.14. Delivery of Third-Party Inspector's Report.

The third-party inspector shall deliver its report to the commission on a commission-prescribed form and the commission shall promptly transmit the report to the homeowner and the builder.

#### §313.15. Reimbursement of Fees and Costs.

If the third-party inspector's findings support all or a portion of the allegations of the requesting party, the commission may order the other party to reimburse all or part of the fees or costs of inspection paid by the requestor.

#### §313.16. Time to Appeal of the Third-Party Inspector's Report.

A homeowner or builder may appeal the third-party inspector's report and recommendation on or before the 15th day after receipt of the report by the objecting party. If either party is able to show good cause why the deadline to file a notice of appeal of the third-party inspector's report should be extended, the commission may extend the deadline by no more than an additional fifteen days.

#### §313.17. Appeal Process.

(a) If a homeowner or builder appeals the conclusions or recommendations in a third-party inspector's report, the Executive Director shall refer the appeal to a three-person panel made up of state inspectors. If the request involves a structural matter, one of the state inspectors on the panel shall be a licensed professional engineer.

(b) The appellate panel shall conduct a review of the written materials submitted with the request, any information or data gathered by the third-party inspector and the third-party inspector's report and recommendations. The appellate panel will issue written findings of fact and shall approve, reject, or modify the recommendation of the third-party inspector or remand the matter to the third-party inspector for further action as directed by the appellate panel.

(c) The appellate panel shall issue its ruling not later than the 30th day after the date the notice of appeal is filed with the commission.

(d) A ruling by an appellate panel under this section is a final agency decision not subject to further administrative appeal.

#### §313.18. Offer to Repair.

(a) Not later than the 15th day after the third-party inspector's report has been transmitted to the parties by the commission, or if the third-party inspector's report and recommendation has been appealed, not later than the date of a final decision by the appellate panel, a builder may make a written offer of settlement to the homeowner to repair the alleged construction defect(s).

(b) The offer must be sent by certified mail, return receipt requested, to the homeowner at the homeowner's last known address or the homeowner's attorney, if the homeowner is represented by counsel.

(c) The offer may include either an agreement by the builder to repair or to have repaired by an independent contractor, partially or totally at the builder's expense, or at a reduced rate to the homeowner, any construction defect(s) included in the SIRP request.

(d) The offer shall include in reasonable detail the repairs to be made and shall provide that the repairs will be made within forty-five (45) days after the date the builder receives written notice of the homeowner's acceptance of the offer, except as delayed by the homeowner or the occurrence of events beyond the builder's control.

#### §313.19. Response to Offer to Repair.

If the homeowner considers the builder's offer to repair under §313.18 to be unreasonable, the homeowner shall notify the builder in writing on or before the 25th day after the date the homeowner receives the offer why the homeowner considers the offer to be unreasonable. The homeowner shall describe in reasonable detail the homeowner's reasons for concluding that the offer is unreasonable.

#### §313.20. Supplemental Written Offer to Repair.

Not later than the tenth day after the date the builder receives written notice from the homeowner under §313.19 the builder may make a supplemental written offer of settlement. The builder shall send the supplemental written offer by certified mail return receipt requested to the homeowner, or if the homeowner is represented by counsel, to the homeowner's attorney.

#### §313.21. Offer Rejected.

An offer of repair made under this chapter that is not accepted before the 25th day after the date of receipt, the offer is considered rejected.

#### §313.22. Procedures Following Acceptance of Offer of Repair.

(a) If a homeowner accepts a builder's offer to repair under this chapter, the builder, upon completion of the repairs, shall engage the third-party inspector who provided the report and recommendation under §313.13 to inspect the repairs and to determine whether the home, as repaired, complies with the applicable statutory warranty and building and performance standards adopted by the commission.

(b) Following the third-party inspector's post-repair inspection, the builder shall have a reasonable period, not to exceed fifteen (15) days, to address any minor cosmetic deficiencies necessary to fully complete the repairs.

#### §313.23. Third-Party Inspectors as Witnesses.

(a) If a third-party inspectors registered by the commission is subpoenaed by a party to a dispute between a homeowner and builder to provide testimony by deposition, in court or in any alternative form of dispute resolution proceeding, or to provide other expert witness services, the party who issues the subpoena must pay to the third-party inspector a reasonable fee and related expense for the services requested.

(b) The commission shall establish reasonable fees for witness services performed by a registered third-party inspector as a result of an inspection undertaken pursuant to the SIRP.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 9, 2004.

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Susan Durso

General Counsel

Texas Residential Construction Commission

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For further information, please call: (512) 463-9524



## CHAPTER 318. RESIDENTIAL CONSTRUCTION ARBITRATION

### SUBCHAPTER B. CERTIFICATION OF ARBITRATORS

#### **10 TAC §§318.20, 318.22, 318.24, 318.26, 318.28, 318.30, 318.32**

The Texas Residential Construction Commission (the "commission") adopts on an emergency basis new rules at Title 10, Part 7, Chapter 318, Subchapter B, §§318.20, 318.22, 318.24, 318.26, 318.28, 318.30, and 318.32, regarding the registration and certification of arbitrators who provide arbitration services in disputes regarding residential construction as provided for in Title 16, Property Code.

The rules are adopted on an emergency basis to comply with new legislation, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01). The new rules are adopted under new Chapter 417, Property Code (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), which provides that the commission establish by rule eligibility requirements and procedures for a person to be certified by the commission as a residential construction arbitrator and that the commission maintain a list of certified arbitrators and make that list available to the public. The adoption of the emergency rule permits the commission to comply with the timetable prescribed by House Bill 730 and set out in Title 16, Property Code.

The statutory provisions affected by the emergency adoption are those set forth in the Title 16, Property Code and House Bill 730, 78th Legislature.

No other statutes, articles, or codes are affected by the adoption.

#### §318.20. Application.

(a) A person seeking to become registered as a residential construction arbitrator with the commission must submit a completed application on a commission-prescribed form accompanied by the appropriate fee.

(b) A person seeking to become registered as a residential construction arbitrator with the commission shall:

(1) provide evidence that the person has acquired a minimum of five (5) years of experience conducting arbitrations between homeowners and builders involving construction defects;

(2) certify that the person is familiar with the statutory warranties and building and performance standards established in Property

Code Chapter 430 and with the provisions of Property Code Chapter 27;

(3) certify that the person has not had a professional license or certification suspended or revoked in any jurisdiction; and

(4) submit a list that includes any person registered as a builder or certified as a third-party inspector with whom the applicant has a direct or indirect personal or business relationship that could reasonably be considered to create a conflict of interest for that person in serving as an arbitrator in a dispute involving the person listed as a party or a witness.

#### §318.22. Publication and Comment.

(a) The commission shall publish in the *Texas Register* notice of the application of each person seeking to become registered under this subchapter.

(b) The commission shall accept public comment on each application for twenty-one (21) days after the date of publication of the notice.

#### §318.24. Registration.

After the conclusion of the comment period under §318.22, if the commission finds it to be in the public interest, the commission shall register the arbitrator under this subchapter.

#### §318.26. Denial of an Application.

(a) The commission shall deny an application for registration if the commission determines that the applicant is not qualified or if registration of the applicant would otherwise not be in the public interest.

(b) If the commission denies an application, the commission shall provide written notice to the applicant detailing its reasons for denial not later than the 15th day after the closing of the public comment period on the application.

#### §318.28. Appeal.

(a) A person whose application has been denied under §318.26 may appeal the decision to the Executive Director.

(b) The decision of the Executive Director is a final agency decision not subject to further administrative appeal.

#### §318.30. Material Change in Information.

Each person who is registered as an arbitrator under this subchapter shall report to the commission in writing any material change in the information provided to the commission pursuant to this subchapter within thirty (30) days of the change.

#### §318.32. Renewal of Registration.

(a) A person who has been registered by the commission under this subchapter must submit an application for renewal of the registration no later than thirty (30) days prior to the expiration of the effective date of the registration established by the commission.

(b) The person seeking renewal shall submit a renewal application on a commission-prescribed form accompanied by the appropriate fee as established by the commission.

(c) The person must provide evidence that the person has completed five (5) hours of approved continuing education since the effective date of registration provided by the commission.

(d) For purposes of renewal under this section "approved continuing education" includes

(1) attendance of a course or seminar on arbitrations conducted by:



(A) an accredited institution of higher education;

(B) a state bar association; or

(C) an entity organized for the purpose of conducting educational seminars or courses that regularly conducts seminars or courses for arbitrators or lawyers; or

(2) any other course or seminar approved by the Executive Director for purposes of this subchapter.

(e) A person seeking to renew under this section who is also an attorney licensed by the State Bar of Texas may satisfy the continuing education requirements of this section by satisfying the annual continuing legal education licensure requirements set by the State Bar.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Susan Durso

General Counsel

Texas Residential Construction Commission

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For further information, please call: (512) 463-9524



## **TITLE 13. CULTURAL RESOURCES**

### **PART 3. TEXAS COMMISSION ON THE ARTS**

#### **CHAPTER 31. AGENCY PROCEDURES**

The Texas Commission on the Arts adopts on an emergency basis the repeal and replacement of §31.10, concerning Financial Assistance Application Form. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously proposes the repeal and replacement of §31.10 for permanent adoption.

The purpose of the repeal and replacement is to be consistent with changes to programs and services of the commission as outlined in the Texas Arts Plan as amended December 2003.

The section is adopted on an emergency basis to enable the Texas Commission on the Arts to get the word out to the arts field about our programs in a timely manner in anticipation of our upcoming annual grants deadline.

##### **13 TAC §31.10**

*(Editor's note: The text of the following section adopted for repeal on an emergency basis will not be published. The section may be examined in the offices of the Texas Commission on the Arts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

§31.10. *Financial Assistance Application Form.*

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 8, 2004.

TRD-200400114

Ricardo Hernandez

Executive Director

Texas Commission on the Arts

Effective Date: January 8, 2004

Expiration Date: May 6, 2004

For further information, please call: (512) 936-6564



##### **13 TAC §31.10**

The new section is adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

§31.10. *Financial Assistance Application Form.*

The commission adopts by reference application forms and instructions for the Financial Assistance Application Form as outlined in A Guide to Operations, Programs, and Services as amended December 2003. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 8, 2004.

TRD-200400115

Ricardo Hernandez

Executive Director

Texas Commission on the Arts

Effective Date: January 8, 2004

Expiration Date: May 6, 2004

For further information, please call: (512) 936-6564



#### **CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES**

The Texas Commission on the Arts adopts on an emergency basis the repeal and replacement of §35.1 and §35.2, concerning A Guide to Operations and A Guide to Programs and Services. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously proposes the repeal and replacement of §35.1 and §35.2 for permanent adoption.

The purpose of the repeal and replacement is to be consistent with changes to programs and services of the commission as outlined in the Texas Arts Plan as amended December 2003.

These sections are adopted on an emergency basis to enable the Texas Commission on the Arts to get the word out to the arts field about our programs in a timely manner in anticipation of our upcoming annual grants deadline.

##### **13 TAC §35.1, §35.2**

*(Editor's note: The text of the following emergency adopted repeals will not be published. The sections may be examined in the offices of*

the Texas Commission on the Arts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

§35.1. *A Guide to Operations.*

§35.2. *A Guide to Programs and Services.*

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 6, 2004.

TRD-200400053

Ricardo Hernandez

Executive Director

Texas Commission on the Arts

Effective Date: January 6, 2004

Expiration Date: May 4, 2004

For further information, please call: (512) 936-6564

### 13 TAC §35.1, §35.2

The new sections are adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

§35.1. *A Guide to Operations.*

The commission adopts by reference *A Guide to Operations* (revised December 2003). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at [www.arts.state.tx.us](http://www.arts.state.tx.us).

§35.2. *A Guide to Programs and Services.*

The commission adopts by reference *A Guide to Programs and Services* (revised December 2003). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at [www.arts.state.tx.us](http://www.arts.state.tx.us).

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 6, 2004.

TRD-200400054

Ricardo Hernandez

Executive Director

Texas Commission on the Arts

Effective Date: January 6, 2004

Expiration Date: May 4, 2004

For further information, please call: (512) 936-6564

## CHAPTER 37. APPLICATION FORMS AND INSTRUCTIONS FOR FINANCIAL ASSISTANCE

### 13 TAC §37.23, §37.26

(Editor's note: The text of the following emergency adopted repeals will not be published. The sections may be examined in the offices of the Texas Commission on the Arts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on the Arts adopts on an emergency basis the repeal of §37.23 and §37.26, concerning Application Form and Instructions for Arts in Education Program--Sponsors and Application Form and Instructions for Texas Touring Arts Program--Sponsors. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously proposes the repeal of §37.23 and §37.26 for permanent adoption.

The purpose of the repeal is to be consistent with changes to programs and services of the commission as outlined in the Texas Arts Plan as amended December 2003.

These sections are adopted on an emergency basis to enable the Texas Commission on the Arts to get the word out to the arts field about our programs in a timely manner in anticipation of our upcoming annual grants deadline.

The repeals are adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

§37.23. *Application Form and Instructions for Arts in Education Program--Sponsors.*

§37.26. *Application Form and Instructions for Texas Touring Arts Program--Sponsors.*

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 6, 2004.

TRD-200400055

Ricardo Hernandez

Executive Director

Texas Commission on the Arts

Effective Date: January 6, 2004

Expiration Date: May 4, 2004

For further information, please call: (512) 936-6564

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

#### CHAPTER 318. RESIDENTIAL CONSTRUCTION ARBITRATION

##### SUBCHAPTER B. CERTIFICATION OF ARBITRATORS

###### 10 TAC §§318.20, 318.22, 318.24, 318.26, 318.28, 318.30, 318.32

The Texas Residential Construction Commission (the "commission") proposes for adoption new rules at Title 10, Part 7, Chapter 318, Subchapter B, §§318.20, 318.22, 318.24, 318.26, 318.28, 318.30 and 318.32, regarding the registration and certification of arbitrators who provide arbitration services in disputes between homeowners and builders regarding residential construction as provided for in Title 16, Property Code.

New §318.20 describes the application and the information required of a person seeking to become certified by the agency as an arbitrator of residential construction disputes.

New §318.22 notices those persons seeking to become certified arbitrators that the application will be posted in the *Texas Register* for a twenty-one day comment period.

New §318.24 states that after the comment period if the commission has determined that it is in the public interest, the commission shall register the arbitrator to be included on the list of certified arbitrators maintained by the commission.

New §318.26 states that if the commission determines that the applicant is not qualified or that it is not in the public interest to certify the applicant, the commission shall provide written notice to the applicant detailing its reasons for denial not later than the 15th day after the closing of the public comment period on the application.

New §318.28 states that a person denied certification may appeal the decision to the Executive Director. The Executive Director's decision is a final agency decision and is not subject to further administrative appeal.

New §318.30 states that certified arbitrators must provide the commission with any material change in the information included on the application within thirty (30) days of the change.

New §318.32 states registered arbitrators must be renew their registration no later than thirty (30) days prior to the date of expiration of the effective period of the registration as established by the commission. The person seeking renewal shall submit a

renewal application on a commission-prescribed form accompanied by the appropriate fee as established by the commission. The person must provide evidence that the person has completed five (5) hours of approved continuing education since the effective date of registration provided by the commission. The term "continuing education" includes attendance of a course or seminar on arbitrations conducted by an accredited institution of higher education, a state bar association, an entity organized for the purpose of conducting educational seminars or courses that regularly conducts seminars or courses for arbitrators or lawyers, or any other course or seminar approved by the Executive Director for purposes of this subchapter. A person seeking to renew under this section who is also an attorney licensed by the State Bar of Texas may satisfy the continuing education requirements of this section by satisfying the annual continuing legal education licensure requirements set by the State Bar.

Stephen D. Thomas, Executive Director, has determined that for each year of the first five-year period the new rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new rules.

Mr. Thomas has also determined that for each year of the first five-year period the new rules are in effect, the public will benefit from the identification of arbitrators who have experience in disputes involving residential construction.

Mr. Thomas has also determined that there will be no effect on large, small and micro-businesses as a result of the adoption of these rules.

Mr. Thomas has also determined that for each year of the first five-year period the proposed rules are in effect there will be no effect on local economies; therefore, no local employment impact statement is required pursuant to Administrative Procedure Act §2001.022.

Interested persons may submit written comments (16 copies) on the proposed rules to Susan K. Durso, General Counsel, Texas Residential Construction Commission, PO Box 13144, Austin, Texas, 78711. Comments may be submitted electronically to [rulescomments@trcc.state.tx.us](mailto:rulescomments@trcc.state.tx.us). The deadline for submission of comments with the commission is thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rules.

The new rules are proposed to implement new legislation enacted during the 78th Legislative Session, Regular Session, including House Bill 730. The new rules are proposed for adoption pursuant to Property Code, Chapter 417, which provides, in part, that the commission establish eligibility requirements and procedures for person to become certified as arbitrators to perform arbitration services in disputes involving residential construction

and generally, pursuant to Property Code §408.001, which provides authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01).

The proposed rules were also adopted on an emergency basis to comply with new legislation enacted during the 78th Legislative Session, Regular Session, including House Bill 730. The new rules were adopted under Chapter 417, Property Code (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), which provides in part that the commission make a list of certified arbitrators available to the public. The adoption of the emergency rules was necessary to allow the commission to comply with the timetable prescribed by House Bill 730 and set out in Title 16, Property Code. These emergency rules are published in the Emergency Rules section of this issue of the *Texas Register*.

The statutory provisions affected by the proposed rules are those set forth in the Title 16, Property Code and House Bill 730, 78th Legislature.

No other statutes, articles, or codes are affected by the proposal.

§318.20. Application.

(a) A person seeking to become registered as a residential construction arbitrator with the commission must submit a completed application on a commission-prescribed form accompanied by the appropriate fee.

(b) A person seeking to become registered as a residential construction arbitrator with the commission shall:

(1) provide evidence that the person has acquired a minimum of five (5) years of experience conducting arbitrations between homeowners and builders involving construction defects;

(2) certify that the person is familiar with the statutory warranties and building and performance standards established in Property Code Chapter 430 and with the provisions of Property Code Chapter 27;

(3) certify that the person has not had a professional license or certification suspended or revoked in any jurisdiction; and

(4) submit a list that includes any person registered as a builder or certified as a third-party inspector with whom the applicant has a direct or indirect personal or business relationship that could reasonably be considered to create a conflict of interest for that person in serving as an arbitrator in a dispute involving the person listed as a party or a witness.

§318.22. Publication and Comment.

(a) The commission shall publish in the *Texas Register* notice of the application of each person seeking to become registered under this subchapter.

(b) The commission shall accept public comment on each application for twenty-one (21) days after the date of publication of the notice.

§318.24. Registration.

After the conclusion of the comment period under §318.22, if the commission finds it to be in the public interest, the commission shall register the arbitrator under this subchapter.

§318.26. Denial of an Application.

(a) The commission shall deny an application for registration if the commission determines that the applicant is not qualified or if

registration of the applicant would otherwise not be in the public interest.

(b) If the commission denies an application, the commission shall provide written notice to the applicant not later than the 15th day after the closing of the public comment period on the application.

§318.28. Appeal.

(a) A person whose application has been denied under §313.26 may appeal the decision to the Executive Director.

(b) The decision of the Executive Director is a final agency decision not subject to further administrative appeal.

§318.30. Material Change in Information.

Each person who is registered as an arbitrator under this subchapter shall report to the commission in writing any material change in the information provided to the commission pursuant to this subchapter within thirty (30) days of the change.

§318.32. Renewal of Registration.

(a) A person who has been registered by the commission under this subchapter must submit an application for renewal of the registration no later than thirty (30) days prior to the expiration of the effective date of the registration established by the commission.

(b) The person seeking renewal shall submit a renewal application on a commission-prescribed form accompanied by the appropriate fee as established by the commission.

(c) The person must provide evidence that the person has completed five (5) hours of approved continuing education since the effective date of registration provided by the commission.

(d) For purposes of renewal under this section "approved continuing education" includes

(1) attendance of a course or seminar on arbitrations conducted by:

(A) an accredited institution of higher education;

(B) a state bar association; or

(C) an entity organized for the purpose of conducting educational seminars or courses that regularly conducts seminars or courses for arbitrators or lawyers; or

(2) any other course or seminar approved by the Executive Director for purposes of this subchapter.

(e) A person seeking to renew under this section who is also an attorney licensed by the State Bar of Texas may satisfy the continuing education requirements of this section by satisfying the annual continuing legal education licensure requirements set by the State Bar.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 9, 2004.

TRD-200400166

Susan Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 463-9524

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## TITLE 13. CULTURAL RESOURCES

### PART 3. TEXAS COMMISSION ON THE ARTS

#### CHAPTER 31. AGENCY PROCEDURES

The Texas Commission on the Arts proposes the repeal and replacement of §31.10, concerning Financial Assistance Application Form. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously adopts the repeal and replacement of §31.10 on an emergency basis.

The purpose of the repeal and replacement is to be consistent with changes to programs and services of the commission as outlined in the Texas Arts Plan as amended December 2003.

Mary Beck, Director of Finance and Administration, Texas Commission on the Arts, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Beck also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the ability to utilize federal and state financial assistance funds in a more effective manner, thereby allowing more Texas organizations, communities, and citizens to participate in agency programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ricardo Hernandez, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

##### 13 TAC §31.10

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on the Arts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statute, code, or article is affected by this proposal.

§31.10. Financial Assistance Application Form.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 8, 2004.

TRD-200400116

Ricardo Hernandez

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 936-6564



##### 13 TAC §31.10

The new section is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statute, code, or article is affected by this proposal.

§31.10. Financial Assistance Application Form.

The commission adopts by reference application forms and instructions for the Financial Assistance Application Form as outlined in A Guide to Operations, Programs, and Services as amended December 2003. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 8, 2004.

TRD-200400117

Ricardo Hernandez

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 936-6564



#### CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

The Texas Commission on the Arts proposes the repeal and replacement of §35.1 and 35.2, concerning A Guide to Operations and A Guide to Programs and Services. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously adopts the repeal and replacement of §35.1 and §35.2 on an emergency basis.

The purpose of the repeal and replacement is to be consistent with changes to programs and services of the commission as outlined in the Texas Arts Plan as amended September 2002.

Mary Beck, Director of Finance and Administration, Texas Commission on the Arts, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Beck also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the ability to utilize federal and state financial assistance funds in a more effective manner, thereby allowing more Texas organizations, communities, and citizens to participate in agency programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Ricardo Hernandez, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

##### 13 TAC §35.1, §35.2

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of*

the Texas Commission on the Arts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statute, code, or article is affected by this proposal.

§35.1. *A Guide to Operations.*

§35.2. *A Guide to Programs and Services.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 6, 2004.

TRD-200400056

Ricardo Hernandez

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 936-6564



### 13 TAC §35.1, §35.2

The new sections are proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statute, code, or article is affected by this proposal.

§35.1. *A Guide to Operations.*

The commission adopts by reference *A Guide to Operations* (revised December 2003). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at [www.arts.state.tx.us](http://www.arts.state.tx.us).

§35.2. *A Guide to Programs and Services.*

The commission adopts by reference *A Guide to Programs and Services* (revised December 2003). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at [www.arts.state.tx.us](http://www.arts.state.tx.us).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 6, 2004.

TRD-200400057

Ricardo Hernandez

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 936-6564



## CHAPTER 37. APPLICATION FORMS AND INSTRUCTIONS FOR FINANCIAL ASSISTANCE

### 13 TAC §37.23, §37.26

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on the Arts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on the Arts proposes the repeal of §37.23 and §37.26, concerning Application Form and Instructions for Arts in Education Program--Sponsors and Application Form and Instructions for Texas Touring Arts Program--Sponsors. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously adopts the repeal of §37.23 and §37.26 on an emergency basis.

The purpose of the repeal is to be consistent with changes to programs and services of the commission as outlined in the Texas Arts Plan as amended September 2002.

Mary Beck, Director of Finance and Administration, Texas Commission on the Arts, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Beck also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the ability to utilize federal and state financial assistance funds in a more effective manner, thereby allowing more Texas organizations, communities, and citizens to participate in agency programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Ricardo Hernandez, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

The repeals are proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statute, code, or article is affected by this proposal.

§37.23. *Application Form and Instructions for Arts in Education Program--Sponsors.*

§37.26. *Application Form and Instructions for Texas Touring Arts Program--Sponsors.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 6, 2004.

TRD-200400058

Ricardo Hernandez

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 936-6564



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

## CHAPTER 193. STANDING DELEGATION ORDERS

### 22 TAC §193.6

The Texas State Board of Medical Examiners proposes an amendment to §193.6, concerning Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses. The proposal is necessary for a general clean-up in §193.6(l) relating to the wording about controlled substances.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule as proposed.

Ms. Shackelford also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the section will be an updated rule. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed rule: Texas Occupations Code Annotated, section 157.059.

*§193.6. Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses.*

(a) - (k) (No change.)

(l) Delegation related to obstetrical services.

(1) A physician may delegate to a physician assistant offering obstetrical services and certified by the board as specializing in obstetrics or an advanced practice nurse recognized by the Texas State Board of Nurse Examiners as a nurse midwife the act or acts of administering or providing controlled substances to the nurse midwife's or physician assistant's clients during intra-partum and immediate post-partum care. The physician shall not delegate the use of a prescription sticker or the use or issuance of an official prescription form relating to the prescription of Schedule II controlled substance as described under §481.075 of [or issuance of a triplicate prescription form under the triplicate prescription program,] the Health and Safety Code[; §481.075].

(2) - (9) (No change.)

(10) This subsection does not limit the authority of a physician to delegate the carrying out or signing of a prescription drug order involving a controlled substance under subsection (n) of this section.

(m) - (n) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2004.

TRD-200400175

Donald W. Patrick, MD, JD

Executive Director

Texas State Board of Medical Examiners

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 305-7016

## PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

### CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT SUBCHAPTER A. ETHICAL STANDARDS

#### 22 TAC §663.5

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §663.5, concerning Representations. As currently written, §663.5(4) implies that the board has some regulatory authority over fees charged and also a literal reading requires the registrant to quote an estimate and completion time. The preamble to this rule requires the "highest degree of integrity, truthfulness and accuracy" in all dealings with and representations to the public. Language used in the preamble is adequate to protect the public without giving the impression that the board has regulatory authority over fees charged by Registered Professional Land Surveyors.

Deletion of this portion of the Rule will clarify that the board has no regulatory authority over fees charged for land surveying services.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the amendment as the Rule will be easier to understand and will not imply that the board has authority where it does not.

There will be no effect on small or micro businesses. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, TX 78752. Comments may also be faxed to Ms. Smith at the Board at 512/452-7711 or may be sent electronically to sandy.smith@mail.capnet.state.tx.us. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, Chapter 663, Standards of Responsibility and Rules of Conduct

*§663.5. Representations.*

The highest degree of integrity, truthfulness, and accuracy should be paramount in all dealings with, and representations to, others by not misleading in any way the other's understandings of personal qualifications or information regarding a project. The registrant:

(1) shall not allow a person who is not registered or licensed under the Professional Land Surveying Practices Act to exert control over the end product of his/her professional work;

(2) shall not indulge in publicity that is false, misleading, or deceptive;

(3) shall not misrepresent the amount or extent of prior education or experience to any employer or client, nor to the board;

~~[(4) shall as accurately and truthfully represent to a prospective client or employer the costs and completion time of a proposed project as is reasonably possible;]~~

(4) ~~[(5)]~~ shall not hold out as being engaged in partnership or association with any person or firm unless there exists in fact a partnership or associations;

(5) ~~[(6)]~~ shall not, without the knowledge and consent of his/her client, recommend to a client services of another for the purpose of collecting a fee for himself for those services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 8, 2004.

TRD-200400119

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 452-9427



## TITLE 25. HEALTH SERVICES

### PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

#### CHAPTER 409. MEDICAID PROGRAMS SUBCHAPTER L. MENTAL RETARDATION LOCAL AUTHORITY (MRLA) PROGRAM

**25 TAC §§409.501, 409.503, 409.505, 409.507, 409.509, 409.511, 409.513, 409.515, 409.517, 409.519, 409.523, 409.525, 409.527, 409.529, 409.530, 409.531, 409.533, 409.535, 409.537, 409.539, 409.541 - 409.544**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Mental Health and Mental Retardation (department) proposes the repeal of §§409.501, 409.503, 409.505, 409.507, 409.509, 409.511, 409.513, 409.515, 409.517, 409.519, 409.523, 409.525, 409.527, 409.529, 409.530, 409.531, 409.533, 409.535, 409.537, 409.539, and

409.541 - 409.544 of Chapter 409, Subchapter L, governing Mental Retardation Local Authority (MRLA) Program.

The rules are proposed for repeal because the department no longer operates the Mental Retardation Local Authority (MRLA) Program, a Medicaid waiver program authorized under §1915(c) of the Social Security Act. This implements Texas Health and Safety Code, §533.0355, added by House Bill 2292 of the 78th Legislature, which redefined the responsibilities of mental retardation authorities (MRAs), program providers, and the department under the Mental Retardation Local Authority (MRLA) Program. The redefined responsibilities describe a program model that more closely resembles that of the Home and Community-Based Services (HCS) Program than the MRLA Program. The department determined that the most efficacious manner to implement the redefined waiver program responsibilities required by §533.0355 was to provide all waiver services and supports through the HCS Program. Therefore, coinciding with the September 1, 2003, effective date of the relevant provisions of House Bill 2292, the department has provided all Medicaid waiver services through the HCS Program

Cindy Brown, Chief Financial Officer, has determined that, for each year of the first five year period that the proposed repeals are in effect, there are no foreseeable implications relating to costs or revenues of state or local government. The department does not anticipate that the proposed repeals will have an adverse effect on small or micro-businesses. The department does not anticipate that there will be any additional economic cost to persons required to comply with the repeals. The department does not anticipate that the repeals will affect a local economy.

Barry Waller, Director, Long Term Services and Supports, has determined that, for each year of the first five-year period the proposed repeals are in effect, the public benefit expected is that Medicaid waiver services and supports through the department will be provided through one program rather than multiple programs.

Comments concerning the proposed repeals must be submitted in writing to Linda Logan, Director, Policy Development, by mail to P.O. Box 12668, Austin, Texas 78711, by fax to (512) 206-4744, or by e-mail to policy.co@mhmr.state.tx.us within 30 days of publication of this notice.

The rules are proposed for repeal under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the MRLA Program.

The proposed repeals affect Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

*§409.501. Description of the Mental Retardation Local Authority (MRLA) Program.*



- §409.503. Service Components of the MRLA Program.*
- §409.505. Eligibility Criteria.*
- §409.507. Level of Need Assignment.*
- §409.509. Lapsed Level-of-Care.*
- §409.511. TDMHMR Review of Level of Need and Individual Plan of Care.*
- §409.513. Other Program Provider Requirements.*
- §409.515. Provider's Right to Administrative Hearing.*
- §409.517. Rejected Claims.*
- §409.519. Calculation of Co-payment.*
- §409.523. Maintenance of MRLA Program Waiting List.*
- §409.525. Process for Enrollment of Applicants.*
- §409.527. Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs) and Levels of Need (LONs) for Enrolled Individuals.*
- §409.529. Coordination of Transfers and Permanent Discharges.*
- §409.530. Provider Reimbursement.*
- §409.531. Certification Status.*
- §409.533. Hazards to Health, Safety, and Welfare.*
- §409.535. Compliance.*
- §409.537. Sanctions.*
- §409.539. Unannounced or Intermittent Review Visits.*
- §409.541. Compliance with MRLA Program Principles for Mental Retardation Authorities (MRAs).*
- §409.542. TDMHMR Approval of Residences.*
- §409.543. Minimum Qualifications for Service Coordinators.*
- §409.544. Staff Training of Service Coordinators.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 9, 2004.

TRD-200400170

Rodolfo Arredondo

Chair, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 206-5232



## CHAPTER 415. PROVIDER CLINICAL RESPONSIBILITIES

### SUBCHAPTER H. USE OF RESTRAINT IN STATE MENTAL RETARDATION FACILITIES

#### 25 TAC §§415.351 - 415.366

The Texas Department of Mental Health and Mental Retardation (department) proposes new §§415.351 - 415.366 of new Chapter 415, Subchapter H, governing the use of restraint in state mental retardation facilities.

The new subchapter describes policies and procedures that a state mental retardation facility (state MR facility) must implement to ensure that the health, safety, welfare, rights, and privileges of an individual residing in the state MR facility are protected during the use of restraint. Currently, the use of restraint in state MR facilities is addressed briefly in Chapter 405, Subchapter H, governing behavior management--facilities serving persons with mental retardation, which is proposed for repeal contemporaneously in this issue of the *Texas Register*.

Although most provisions in the new subchapter describe existing policies and procedures followed by state MR facilities, a few notable requirements are new. For example, §415.355(b) requires a state MR facility's interdisciplinary team (IDT), with the involvement of a physician, to identify a newly admitted individual's known physical or medical conditions that might constitute a risk to the individual during the use of restraint. Further, the IDT is required to identify other factors, such as the individual's cognitive functioning level, size, weight, emotional condition (including whether the individual has a history of having been physically or sexually abused), or age, which must be taken into account if the use of restraint is considered. The IDT must document this information, as well as any limitations on specific techniques or mechanical devices for restraint identified by the IDT, in the individual's record. Subsection (c) requires that at least annually, or whenever significant changes occur in the identified conditions and factors, that the IDT must, with the involvement of a physician, advanced practice nurse, or physician assistant, review and update the identified conditions, factors, and limitations in the individual's record. Other new requirements of note: in §415.356(e)-(g), the state MR facility must designate staff as "restraint monitor" who, upon being notified that restraint is in use in a behavioral emergency, must go to the site of the restraint to provide supervision and oversight; and, in §415.362(a), when an individual is seriously injured or dies while in restraint an immediate report must be made to the head of the state MR facility or designee who must, within one hour of receiving the report, notify the department's Central Office and initiate an investigation.

Restraint is defined in new §415.353(13) as the use of manual pressure, except for physical guidance or prompting of brief duration, or a mechanical device to restrict: (1) the free movement or normal functioning of the whole or a portion of an individual's body or (2) normal access by the individual to a portion of the individual's body. This definition is more prescriptive than the prevailing operational definition of the term, i.e., restraint is an intervention employed to address an individual's inappropriate behavior. The premise of the new subchapter is that the use of certain techniques or mechanical devices constitute restraint whether they are used to prevent injury when an individual engages in voluntary, inappropriate behavior such as head banging or to protect an individual who experiences involuntary movements, such as violent seizures. The proposed definition effectively re-categorizes as restraint some techniques commonly used by state MR facilities to protect an individual from involuntary self-injury, provide postural support to an individual, or assist an individual in obtaining and maintaining normative bodily functioning. The department explicitly states in §§415.359 and 415.360 that not all techniques used by a state MR facility to protect an individual from involuntary self-injury, provide postural support, or assist in obtaining and maintaining normative bodily functioning meet the definition of restraint. Such techniques, such as the placement of wedges, bolsters, or cushions to position an individual in a bed or chair, do not meet the definition of restraint and are not subject to the provisions of this subchapter.

In §415.354, a state MR facility is required to develop and implement written policies and procedures that, among other things, emphasize the department's commitment to providing treatment that is the least restrictive and most effective alternative available for an individual; staff training that emphasizes early recognition of situations and behaviors that, if not appropriately addressed, could necessitate the use of restraint in a behavioral emergency; and reducing the necessity for the use of restraint in the state MR facility.

General requirements for the use of restraint are detailed in §415.355, many of which describe existing practices that all state MR facilities follow to ensure the protection of an individual's rights and well-being. Most of these practices have their basis in the federal regulations governing the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program at Code of Federal Regulations (CFR), Title 42, §483.450(d), concerning physical restraints, in the Conditions of Participation for Intermediate Care Facilities for Persons with Mental Retardation.

In the next five sections, the department describes the five circumstances under which the use of restraint is permitted with an individual who resides in a state MR facility: in a behavioral emergency (§415.356); as an intervention in a behavior therapy program that addresses inappropriate behavior exhibited voluntarily by an individual (§415.357); during a medical or dental procedure if necessary to protect the individual or others and as a follow-up after a medical or dental procedure or following an injury to promote the healing of wounds (§415.358); to protect the individual from involuntary self-injury (§415.359); and to provide postural support to the individual or to assist the individual in obtaining and maintaining normative bodily functioning (§415.360).

In §415.361, the department specifies that only those mechanical devices designed specifically for the safe and relatively comfortable restraint of humans may be used in the restraint of an individual in a state MR facility. Such devices include commercially available devices acquired by the state MR facility, devices that have been developed independently by or on behalf of the state MR facility, or commercially available mechanical devices that have been altered to accommodate an individual's specific physical needs (e.g., a physical impairment or obesity). In subsection (b), the department describes the process a state MR facility must follow to obtain approval for use of a mechanical device developed independently by or on behalf of the state MR facility or the alteration of a commercially available device to accommodate an individual's specific physical needs. The section also describes precautions that staff must take in the use of mechanical devices, lists and describes mechanical devices that are acceptable for use in a state MR facility, and lists devices that must not be used.

Additional reporting and documentation requirements are described in §415.362 relative to the use of restraint. As noted earlier in this preamble, the most significant provision is the requirement that the head of the state MR facility must be notified immediately, but in no case more than one hour, after staff learn of a serious injury to or death of an individual that occurs while the individual is in restraint. The head of the state MR facility is required to report the death or serious injury within one working day to the State MR Facilities Division in the department's Central Office and to designate staff to investigate the incident.

Requirements for initial and refresher training are set forth in §415.363.

The department developed the new subchapter and related new Subchapter 412, Subchapter I, governing behavior therapy in state mental retardation facilities, which is published for public review and comment in this issue of the *Texas Register*, in response to recent and considerable interest at the federal and state levels by legislators and advocate/stakeholder groups and by state and national media concerning the use of restraint in all institutional settings.

Although recent new statutes and regulations on the federal level have addressed the use of restraint in hospitals and residential care facilities, new federal directives have not been issued regarding ICFs/MR. State MR facilities have based their policies and procedures concerning the use of restraint on the federal regulations governing the ICF/MR Program and on licensure rules issued by the Texas Department of Human Services (TDHS). The TDHS rule provisions related to restraint are found at Texas Administrative Code, Title 40, §90.42, governing standards for facilities serving persons with mental retardation or related conditions. During the recently adjourned 78th Legislature, Senate Bill 59 was introduced that would have addressed the use of restraint in certain health care facilities, including state MR facilities. The bill was not passed; however, certain provisions have been incorporated in this subchapter although the department's Prevention and Management of Aggressive Behavior (PMAB) curriculum addresses these issues in detail. One of those provisions is found in §415.355(f), which forbids the use of restraint in a manner that obstructs an individual's airway, impairs an individual's breathing by putting pressure on the individual's torso, or interferes with an individual's ability to communicate. A second provision of the failed bill is addressed in §415.356(d), which directs that staff must avoid placing an individual in a prone or supine position during the use of personal restraint and, if the individual should roll into a prone or supine position during personal restraint, restore the individual to a standing, sitting, or side position as soon as possible.

The new subchapter is more prescriptive than the federal regulations governing the ICF/MR Program. For example, the interpretive guidelines to the federal regulations at 42 CFR §483.440(c)(6)(iv) specifically state that the use of mechanical devices to protect an individual from injury due to the individual's involuntary movements (i.e., during a seizure) or to position or support an individual does not constitute restraint. As noted earlier in this preamble, the new subchapter specifies that if the use of a mechanical device to protect an individual from involuntary self-injury or to position or support an individual meets the definition of restraint (i.e., a vest or seat belt that restricts the free movement or normal functioning of the whole or a portion of an individual's body or restricts normal access by the individual to a portion of the individual's body), then that use constitutes restraint.

Cindy Brown, chief financial officer, has determined that for each year of the first five year period that the proposed new subchapter is in effect, enforcing or administering the subchapter does have foreseeable implications relating to costs or revenues of state government. State MR facilities may incur additional training costs related to materials, time, and staff in order to comply with the proposed new subchapter. It is not anticipated that the proposed new subchapter will have an adverse economic effect on small businesses or micro-businesses. It is not anticipated that there will be any additional economic cost to persons required to comply with the proposed new subchapter. It is not anticipated that the proposed new subchapter will affect a local economy.

Robert Kifowit, director, State Mental Retardation Facilities, has determined that, for each year of the first five-year period the proposed new subchapter is in effect, the public benefit expected is that the rights and physical well-being of individuals residing in state MR facilities will be protected during the use of restraint.

Comments concerning the proposed new subchapter must be submitted in writing to Linda Logan, director, Policy Development, by mail to P.O. Box 12668, Austin, Texas 78711, by fax to 512/206-4744, or by e-mail to policy.co@mhmr.state.tx.us within 30 days of publication of this notice.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 1:30 p.m., Friday, February 13, 2004, in Building 2, Room 240 of the department's Central Office at 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify State Mental Retardation Facilities in Central Office at least 72 hours prior to the hearing at (512) 206-4538 or at the TDY phone number of Texas Relay, 1/800-735-2988.

The new subchapter is proposed under the Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; THSC, §591.004, which requires the board to ensure the implementation of the Persons with Mental Retardation Act (THSC, Title 7, Subtitle D); and THSC, §592.002, which requires the board to ensure the implementation of certain rights enumerated in THSC, Chapter 592.

The proposed new subchapter affects THSC, Title 7, Subtitle D, and Chapter 592.

§415.351. Purpose.

The purpose of this subchapter is to:

- (1) ensure that the rights and physical well-being of an individual residing in a state mental retardation facility (state MR facility) are protected during the use of restraint; and
- (2) outline policies and procedures for initiating, monitoring, and reporting the use of restraint.

§415.352. Application.

This subchapter applies to state MR facilities.

§415.353. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

- (1) Behavior therapy--Systematic efforts to increase adaptive behaviors and to modify maladaptive or problem behaviors and replace them with behaviors that are adaptive and socially acceptable.
- (2) Behavioral emergency--A situation in which severely aggressive, destructive, or violent behavior exhibited by an individual or overt or continual threats made by an individual:
  - (A) poses a substantial risk of imminent probable death of or substantial bodily harm to the individual or others;
  - (B) has not abated in response to attempted preventive de-escalatory or redirection techniques;
  - (C) could not reasonably have been anticipated;
  - (D) is not addressed in a behavior therapy program; and
  - (E) does not occur during a medical or dental procedure.
- (3) CFR (Code of Federal Regulations)--The compilation of federal agency regulations.

(4) IDT (interdisciplinary team)--Mental retardation professionals and paraprofessionals and other concerned persons, as appropriate, who assess an individual's treatment, training, and habilitation needs and make recommendations for services.

(A) Team membership always includes:

- (i) the individual;
- (ii) the individual's LAR, if any; and
- (iii) persons specified by a state MR facility who are professionally qualified and/or certified or licensed with special training and experience in the diagnosis, management, needs, and treatment of individuals with mental retardation.

(B) Other participants in IDT meetings may include:

- (i) other concerned persons whose inclusion is requested by the individual or the LAR; and
- (ii) at the discretion of the state MR facility, persons who are directly involved in the delivery of mental retardation services to the individual.

(5) Individual--A person with mental retardation who resides in a state MR facility.

(6) IPP (individual program plan)--A plan developed by an individual's IDT that identifies the individual's training, treatment, and habilitation needs and describes appropriate services and supports to meet those needs.

(7) LAR (legally authorized representative)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and may include a parent, guardian, managing conservator of a minor individual, or a guardian of an adult individual.

(8) Legally adequate consent--A term consistent with provisions of the Texas Health and Safety Code (THSC), Title 7, §591.006, which states, in essence, that consent obtained from an individual with mental retardation is legally adequate when each of the following conditions has been met:

(A) legal status: The individual giving the consent:

(i) is 18 years of age or older, or younger than 18 years of age and is or has been married or had the disabilities of minority removed for general purposes by court order as described in the Texas Family Code, Chapter 31; and

(ii) has not been determined by a court to lack capacity to make decisions with regard to the matter for which consent is being sought.

(B) comprehension of information: The individual giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the individual with mental retardation; and

(C) voluntariness: The consent has been given voluntarily and free from coercion and undue influence.

(9) Mechanical device--A piece of equipment or an apparatus used in the safe and relatively comfortable restraint of individuals.

(10) Medical emergency--A situation in which acute, non-psychiatric signs and symptoms, including severe pain, exhibited by an individual require immediate attention by a physician or nurse:

(A) to preclude serious impairment to normal functioning of one or more of the individual's body parts or organs; or

(B) if the individual is a pregnant woman, to prevent irreversible harm to the woman or the woman's unborn child.

(11) PMAB (Prevention and Management of Aggressive Behavior)--The department's proprietary risk management curriculum that is intended to reduce the likelihood of injuries caused by the aggressive behavior of individuals receiving department services. The curriculum presents a graduated system of interventions that rely on the least restrictive approaches possible to respond to a behavioral emergency.

(12) Qualified mental retardation professional (QMRP)--A state MR facility employee responsible for integrating, coordinating, and monitoring an individual's IPP who meets the requirements of 42 CFR Title 42 §483.430.

(13) Restraint--The use of manual pressure, except for physical guidance or prompting of brief duration, or a mechanical device to restrict:

(A) the free movement or normal functioning of the whole or a portion of an individual's body; or

(B) normal access by the individual to a portion of the individual's body.

(14) Restraint monitor--An employee of the state MR facility who:

(A) has experience working directly with persons with mental retardation; and

(B) is designated to:

(i) go to a site where restraint in a behavioral emergency is implemented; and

(ii) provide supervision and oversight.

(15) State MR facility--A state mental retardation facility, i.e., a state school or state center operated by the department that provides residential services to individuals with mental retardation.

#### §415.354. General Provisions.

(a) Each state MR facility must have and implement written policies and procedures that:

(1) do not conflict with this subchapter or those provisions of the Conditions of Participation for Intermediate Care Facilities for Persons with Mental Retardation (42 CFR §483.410-483.480, et. seq.) concerning the management of inappropriate behavior;

(2) emphasize the department's commitment to:

(A) providing treatment that is the least restrictive and most effective alternative available for an individual;

(B) staff training that emphasizes early recognition of situations and behaviors that, if not appropriately addressed, could necessitate the use of restraint in a behavioral emergency; and

(C) reducing the necessity for the use of restraint;

(3) detail requirements for documenting and reporting the use of restraint, including instances when an individual:

(A) is seriously injured or dies while in restraint during a behavioral emergency or as part of a behavior therapy program; or

(B) dies within 24 hours after being released from a restraint used during a behavioral emergency or as part of a behavior therapy program; and

(4) detail the training and demonstration of competence requirements for state MR facility staff.

(b) The standards in this subchapter take precedence over other applicable standards, including the Conditions of Participation for Intermediate Care Facilities for Persons with Mental Retardation (42 CFR, §§483.410-483.480, et. seq.), whenever the other applicable standards are less restrictive.

#### §415.355. General Principles for the Use of Restraint.

(a) The general principles listed in this subsection apply to the use of restraint in each of the following circumstances, unless explicitly stated otherwise:

(1) in a behavioral emergency;

(2) as an intervention in a behavior therapy program that addresses inappropriate behavior exhibited voluntarily by an individual (e.g., prevention gouging of the individual's own eyes through the use of elbow immobilizers);

(3) during a medical or dental procedure if necessary to protect the individual or others and as a follow-up after a medical or dental procedure or following an injury to promote the healing of wounds;

(4) to protect the individual from involuntary self-injury (e.g., helmet for an individual who, during seizures, loses consciousness, falls to the floor, and risks head injuries), although not all techniques used by a state MR facility to protect an individual from involuntary self-injury constitute the use of restraint; and

(5) to provide postural support to the individual or to assist the individual in obtaining and maintaining normative bodily functioning, although not all techniques used by a state MR facility to provide postural support or assist in obtaining and maintaining constitute the use of restraint.

(b) Upon an individual's admission to a state MR facility, an IDT must:

(1) with the involvement of a physician, identify:

(A) the individual's known physical or medical conditions that might constitute a risk to the individual during the use of restraint; and

(B) other factors that must be taken into account if the use of restraint is considered including, but not limited to, the individual's cognitive functioning level, size, weight, emotional condition (including whether the individual has a history of having been physically or sexually abused), and age; and

(2) document the identified conditions and factors and, as applicable, limitations on specific techniques or mechanical devices for restraint, in the individual's record.

(c) At least annually, or when significant changes occur to the extent and nature of the identified conditions and factors documented in the individual's record, the IDT must ensure that a physician, advanced practice nurse, or physician assistant reviews and updates, as necessary, the identified conditions, factors, and limitations on specific techniques or mechanical devices for restraint documented in the individual's record.

(d) Before restraint is used with an individual, state MR facility staff must determine that less restrictive, less intrusive interventions will be ineffective.

(e) Restraint must never be used:

(1) for disciplinary purposes;

- (2) for the convenience of staff or other individuals; or
- (3) as a substitute for effective treatment or habilitation.
- (f) Restraint must be used for the shortest period of time necessary to ensure:
  - (1) protection for the individual or others in a behavioral emergency; and
  - (2) therapeutic effectiveness;
    - (A) as part of a behavior therapy program;
    - (B) as part of a medical or dental procedure; and
    - (C) in protecting against involuntary self-injury.
- (g) Restraint must not be used in a way that:
  - (1) obstructs the individual's airway;
  - (2) impairs the individual's breathing by putting pressure on the individual's torso; or
  - (3) interferes with the individual's ability to communicate.
- (h) Restraint must be implemented in a manner that:
  - (1) takes into consideration the individual's known physical or medical conditions that might constitute a risk to the individual during restraint, as documented in the individual's record in accordance with subsections (b)(2) and (c) of this section;
  - (2) takes into consideration other factors, including the individual's cognitive functioning level, size, weight, known physical, medical, and emotional condition, and age, as documented in the individual's record in accordance with subsections (b)(2) and (c) of this section;
  - (3) is consistent with the limitations on specific techniques or mechanical devices for restraint documented in the individual's record in accordance with subsections (b)(2) and (c) of this section;
  - (4) reduces the risk of injury or undue physical discomfort to the individual; and
  - (5) safeguards the individual's dignity, privacy, and well-being.
- (i) Restraint must be implemented:
  - (1) with only the minimal amount of force or pressure that is reasonable and necessary to ensure the safety of the individual and others.
  - (2) without securing the individual to a stationary object while the individual is in a standing position;
  - (3) without causing pain that restricts the individual's movement; and
  - (4) without violating the individual's rights as described in §405.625 of this title (relating to Rights of Clients Receiving Residential Mental Retardation Services).
- (j) Restraint must be authorized as described in:
  - (1) §415.356 of this title (relating to Use of Restraint in a Behavioral Emergency);
  - (2) §415.357 of this title (relating to Use of Restraint in a Behavior Therapy Program);
  - (3) §415.358 of this title (relating to Use of Restraint During Medical or Dental Procedures);

- (4) §415.359 of this title (relating to Use of Restraint with a Mechanical Device to Protect an Individual from Involuntary Self-Injury; or

- (5) §415.360 of this title (relating to Use of Restraint with a Mechanical Device to Provide Postural Support.

- (k) When an individual is restrained, staff must ensure that the individual is:

- (1) provided immediate relief, which may include immediate release from restraint, and checked by a nurse if the individual shows signs or symptoms of physical distress;

- (2) provided with medications as prescribed;

- (3) offered regular meals and snacks or, as appropriate, a nutritionally equivalent substitute;

- (4) monitored to the extent necessary, with consideration given to the individual's position, level of agitation, and the identified conditions and factors documented in the individual's record as described in subsection (b)(2) of this section to:

- (A) prevent the individual from choking or aspirating food or fluid; and

- (B) protect the individual from physical distress, self-injury, or injury by another individual. (For example, an individual in four-point restraint should be monitored continuously by staff, while an individual wearing a helmet or mittens may not require continuous monitoring.); and

- (5) made comfortable to the extent appropriate if the individual falls asleep while being restrained with a mechanical device. (For example, straps may be loosened or removed.)

- (l) At shift change, staff going off-duty must meet with staff coming on-duty who will be responsible for the care of an individual who is in restraint as a result of a behavioral emergency or as part of a behavior therapy program.

- (m) All communication with an individual concerning the use of restraint must be:

- (1) conducted in a language or method that is understandable by the individual;

- (2) tailored to the individual's ability to comprehend; and

- (3) responsive to any visual or hearing impairment the individual is known to have.

- (n) If an individual in restraint experiences a medical emergency, staff must:

- (1) release the individual from restraint as soon as possible as indicated by the medical emergency; and

- (2) ensure that the medical emergency is promptly addressed as described in the state MR facility's policies and procedures concerning management of a medical emergency.

- (o) If an emergency evacuation or an evacuation drill occurs while an individual is in restraint, staff will respond as described in the state MR facility's policies and procedures to ensure the individual's safety.

- (p) If an individual is involved in a program outside the state MR facility, e.g., attending public school or working, the state MR facility will:

(1) coordinate with staff from the outside program in the assessment and development of interventions with the goal of consistency in the use of restraint;

(A) in a behavioral emergency; and

(B) as an intervention in a behavior therapy program;

and

(2) invite staff of the outside program to participate in IDT meetings at which interventions, including behavior therapy programs, are discussed.

§415.356. Use of Restraint in a Behavioral Emergency.

(a) A physician must not issue a standing or "as needed" order for the use of restraint in a behavioral emergency.

(b) If an individual exhibits behavior that staff believe is likely to escalate into a behavioral emergency, staff first should attempt verbal or other de-escalative interventions in which they have been trained as described in §415.363(b) of this title (relating to Staff Training in the Use of Restraint).

(c) If the individual's behavior escalates into a behavioral emergency, one or more staff may initiate:

(1) personal restraint as instructed during Prevention and Management of Aggressive Behavior (PMAB) training provided by the state MR facility as described in §415.363(b) of this title (relating to Staff Training in the Use of Restraint); or

(2) in the rare situation when PMAB procedures cannot be safely applied, staff may take such actions as are reasonably believed to be immediately necessary to avoid imminent harm to the individual or others, including the use of a mechanical device, as long as those actions do not include acts of unnecessary force.

(d) Unless a physician's order specifically directs otherwise as a result of the identified conditions and factors documented in the individual's record as described in §415.355(b)(2) of this title (relating to General Principles for the Use of Restraint), staff must:

(1) not place an individual in a prone or supine position during personal restraint; and

(2) if the individual in personal restraint rolls into a prone or supine position, restore the individual to a standing, sitting, or side position as soon as possible.

(e) Immediately after the individual is placed in restraint, staff must:

(1) explain to the individual that release from the restraint will occur as soon as the individual no longer poses a risk of imminent physical harm to self or to others; and

(2) notify a restraint monitor, who will:

(A) immediately go to the site of the restraint and ensure that the restraint is properly used;

(B) ensure that the individual is not at risk of serious injury or death and is receiving proper care;

(C) ensure that staff have explained to the individual that release from the restraint will occur as soon as the individual no longer poses a risk of imminent physical harm to self or others; and

(D) determine whether consultation by a professional is necessary (e.g., psychologist) and contact the appropriate professional, if deemed necessary.

(f) If notified by a restraint monitor that consultation is necessary, a professional (e.g., nurse or psychologist) will:

(1) determine the nature of the restraint monitor's concerns;

(2) go to the site of the restraint, if the professional determines this is warranted by the circumstances; and

(3) address the restraint monitor's concerns.

(g) As soon as reasonably possible, the restraint monitor will report the use of restraint to a nurse with the following information:

(1) time the restraint was initiated;

(2) description of the specific behaviors which necessitated the use of restraint;

(3) the type of restraint;

(4) the duration of the restraint, if applicable; and

(5) the physical and apparent emotional condition of the individual.

(h) Upon being informed of the use of restraint, the nurse will:

(1) inform a physician, either in person or by phone, of the information described in subsection (g) of this section;

(2) document the physician's verbal order in the individual's record to include the:

(A) type of restraint;

(B) behaviors that necessitated the use of restraint;

(C) duration of the order, not to exceed 12 hours from the time the restraint was initiated;

(D) special instructions for the individual's care, if any, while in restraint; and

(E) time and date of the order; and

(3) within 30 minutes or as soon as reasonably possible of the individual's release from restraint or of being told of the individual's release from restraint, conduct a face-to-face evaluation of the individual for injuries and overall well-being.

(i) A physician will sign and date the order no later than the end of the next working day.

(j) While an individual is being restrained, staff must ensure that the individual is provided with:

(1) privacy to the extent possible without compromising the individual's safety or the safety of other individuals and staff; and

(2) an opportunity for a period of not less than five minutes during each one hour period:

(A) for movement and exercise if the restraint restricts the individual's range of motion in a limb or joint; and

(B) to use toilet facilities and drink fluids.

(k) As the circumstances warrant, when releasing an individual from restraint to provide an opportunity for movement and exercise as described in subsection (j) of this section, staff may release one limb at a time.

(l) If an individual released from restraint as described in subsection (j) of this section demonstrates behavior that would constitute a behavioral emergency, staff will return the individual to restraint.

(m) After the individual is released from restraint, staff will:

(1) provide transition activities to facilitate the individual's re-assimilation into the social milieu;

(2) observe the individual for at least 15 minutes to ensure a smooth assimilation with documentation in the individual's record;

(3) if the individual's record directs that the individual be provided with an opportunity to discuss the use of restraint, inform the appropriate staff person; and

(4) complete the state MR facility's restraint checklist documenting the care of the individual while in restraint.

(n) The restraint monitor will ensure that:

(1) all necessary documentation is completed;

(2) the individual's QMRP is notified and the notification is documented in the individual's record; and

(3) the appropriate professional staff (e.g., psychologist) is notified if the restraint occurred within 24 hours of another restraint of the individual in a behavioral emergency.

(o) The state MR facility will ensure that, within 24 hours of the individual's release from restraint, the individual's LAR (or the person listed in the individual's record as primary correspondent) is notified that the individual was restrained in a behavioral emergency with information about the type of restraint and the individual's condition. The notification will be documented in the individual's record.

(p) If staff must use restraint while the individual is away from the state MR facility, staff will contact a nurse at the state MR facility as soon as is reasonably possible.

(q) An individual's IDT will meet to review alternative strategies, which may include developing a behavior therapy program that targets for modification or replacement those behaviors that resulted in behavioral emergencies, if the individual is restrained in a behavioral emergency:

(1) more often than twice within 30 calendar days;

(2) in two or more separate episodes of any duration within 12 hours; or

(3) for more than 12 continuous hours.

(r) Staff will follow the provisions of §405.31 of this title (relating to Emergency Use of Psychotropic Medications) if the use of psychotropic medications in a behavioral emergency is deemed necessary by a physician.

(s) The following procedures must not be used in a behavioral emergency, but may be used as part of an approved behavior therapy program, as described in Chapter 415, Subchapter I of this title (relating to Behavior Therapy in State Mental Retardation Facilities):

(1) use of a time out room; and

(2) restraint using a restraint board.

§415.357. Use of Restraint in a Behavior Therapy Program.

(a) The use of restraint as an intervention in a behavior therapy program must be approved and implemented as described in Chapter 415, Subchapter I of this title (relating to Behavior Therapy--State Mental Retardation Facilities).

(b) Immediately after an individual is placed in restraint as directed in the individual's behavior therapy program, staff must explain to the individual the conditions under which the individual will be released from restraint, unless the behavior therapy program provides direction to the contrary.

(c) Unless a physician's instructions in the behavior therapy plan specifically direct otherwise as a result of the identified conditions and factors documented in the individual's record as described

in §415.355(b)(2) of this title (relating to General Principles for the Use of Restraint), staff must:

(1) not place an individual in a prone or supine position during personal restraint; and

(2) if the individual in personal restraint rolls into a prone or supine position, restore the individual to a standing, sitting, or side position as soon as possible.

(d) If notified by a restraint monitor that consultation is necessary, a professional (e.g., nurse or psychologist) will:

(1) determine the nature of the restraint monitor's concerns; and

(2) go to the site of the restraint, if the professional determines this is warranted by the circumstances.

(e) While an individual is being restrained, staff must ensure that the individual is provided with an opportunity for a period of not less than five minutes during each one hour period:

(1) for movement and exercise if the restraint restricts the individual's range of motion in a limb or joint; and

(2) to use toilet facilities and drink fluids.

(f) If an individual released from restraint as described in subsection (e)(1) of this section demonstrates behavior that would constitute a behavioral emergency, staff will initiate restraint as described in §415.356 of this title (relating to Use of Restraint in a Behavioral Emergency).

(g) Unless the individual's behavior therapy program directs otherwise, a nurse must check the individual for injuries and overall well-being after the individual is released from restraint.

(h) The use of psychotropic medications as part of a behavior therapy program to address an individual's inappropriate behavior must be consistent with the provisions of Chapter 405, Subchapter B of this title (relating to Prescribing of Psychotropic Medication--Mental Retardation Facilities).

§415.358. Use of Restraint During Medical or Dental Procedures and To Promote Healing.

(a) Restraint may be used:

(1) during medical and dental procedures if necessary to protect the individual or others while the procedure is accomplished (e.g., body restraint during surgery; arm restraint during intravenous administration; restraint devices to carry out dental procedures, etc.);

(2) after medical and dental procedures to promote healing; and

(3) following treatment of an injury to promote healing or while recovering from an illness.

(b) Restraint may be used without a physician's written order only if its use is explicitly permitted in the state MR facility's written medical, dental, or nursing policies and procedures.

(1) A dentist may order restraint for dental procedures only.

(2) The use of restraint must be recorded in the individual's record. For restraint during a dental procedure, the information must be included in the dental section of the record.

(c) If a physician or dentist orders a use of restraint that is not explicitly permitted in the state MR facility's written medical, dental, or nursing policies and procedures, the physician or dentist must include in the written order:

- (1) type of restraint;
- (2) clinical justification for the use of restraint;
- (3) duration of the order; and
- (4) special instructions for the individual's care, if any, while in restraint.

(d) While an individual is being restrained as described in this section, staff must evaluate the individual periodically to ensure that the individual is not in physical distress and has not sustained an injury as a result of the restraint.

(e) If restraint is used during a medical or dental procedure other than a medical emergency, the IDT will consider what steps may be taken to reduce the need for restraint during medical or dental care in the future. Possible options include desensitization training, behavior shaping, intensive positive reinforcement, and environmental changes.

§415.359. Use of Restraint with a Mechanical Device to Prevent Involuntary Self-injury.

(a) Some techniques used by a state MR facility to protect an individual from an injury that might result from involuntary movements exhibited by the individual (e.g., falling and hitting head on floor as a result of a seizure) may constitute restraint with a mechanical device. An individual's IDT may authorize staff to use restraint with a mechanical device if:

- (1) the IDT determines that less restrictive interventions are inappropriate;
- (2) a physician concurs with the recommendation and signs an order for use of the mechanical device; and
- (3) facility staff obtains legally adequate consent or authorization for a period not to exceed one year from, as appropriate:
  - (A) the individual with the ability to provide legally adequate consent;
  - (B) the LAR of an individual who does not have the ability to provide legally adequate consent; or
  - (C) the head of the state MR facility, if the individual does not have the ability to provide legally adequate consent and does not have an LAR.

(b) The IDT must document the following in the individual's record:

- (1) a description of the involuntary movements which necessitate the use of restraint with a mechanical device;
- (2) the less restrictive interventions and alternative strategies that have been attempted or considered;
- (3) the specific mechanical device recommended; and
- (4) instructions for safe use of the mechanical device.

(c) Mechanical devices used as described in this section may include:

- (1) helmet for an individual with a seizure disorder;
- (2) bedrails to prevent an individual from falling out of bed; and
- (3) seat belt to prevent an individual from falling out of a wheelchair.

(d) An individual's IDT must review the use of a mechanical device for restraint as described in this section at least annually and

whenever changes in the extent and nature of the individual's involuntary movements occur.

(1) The IDT will consider whether less restrictive interventions might be appropriate to protect the individual from involuntary self-injury.

(2) The IDT may recommend continued use of the mechanical device only if it determines that less restrictive interventions continue to be inappropriate to protect the individual from involuntary self-injury.

(3) The IDT must document in the individual program plan any measures taken to alleviate the need for the mechanical device.

(4) If the IDT recommends a change in the type of mechanical device, the recommendation must be submitted to a physician for review.

(A) If the physician concurs with the recommendation, the physician will sign an order for use of the mechanical device.

(B) Staff must obtain legally adequate consent as described in subsection (a)(3) of this section whenever the IDT recommends a change in the type of mechanical device for restraint.

§415.360. Use of Restraint with a Mechanical Device to Provide Postural Support.

(a) Some techniques used by a state MR facility if an individual requires assistance to maintain postural support may constitute restraint with a mechanical device. An individual's IDT may authorize staff to use restraint with a mechanical device if:

- (1) the individual's IDT concurs with the recommendation of a licensed occupational therapist or physical therapist that less restrictive interventions are inappropriate and recommends the use of restraint with a mechanical device;
- (2) a physician concurs with the IDT's recommendation and signs an order for use of the mechanical device; and
- (3) staff obtains legally adequate consent or authorization for a period not to exceed one year from, as appropriate:
  - (A) the individual with the ability to provide legally adequate consent;
  - (B) the LAR of an individual who does not have the ability to provide legally adequate consent; or
  - (C) the head of the state MR facility, if the individual does not have the ability to provide legally adequate consent and does not have an LAR.

(b) The IDT must document the following in the individual's record:

- (1) a description of the condition which necessitates the use of restraint with a mechanical device;
- (2) the expected therapeutic outcome;
- (3) the less restrictive interventions and alternative strategies that have been attempted or considered;
- (4) the specific mechanical device recommended; and
- (5) instructions for safe use of the mechanical device.

(c) Mechanical devices used as described in this section may include, but are not limited to, vests and seat belts. They are considered an adjunct to proper care of an individual and may not be used as a substitute for appropriate nursing care.



(d) An individual's IDT must review the use of a mechanical device for restraint as described in this section at least annually and whenever changes in the extent and nature of the individual's physical condition occur.

(1) The IDT will consider whether less restrictive interventions might be appropriate to assist the individual in maintaining postural support.

(2) The IDT may recommend continued use of the mechanical device only if it determines that less restrictive interventions continue to be inappropriate to assist the individual in maintaining postural support.

(3) The IDT must document in the IPP any measures taken to alleviate the need for the mechanical device.

(4) If the IDT recommends a change in the type of mechanical device, the recommendation must be submitted to a physician for review.

(A) If the physician concurs with the recommendation, the physician will sign an order for use of the mechanical device.

(B) Staff must obtain legally adequate consent as described in subsection (a)(3) of this section whenever the IDT recommends a change in the type of mechanical device for restraint.

§415.361. Mechanical Devices for Use in Restraint.

(a) A state MR facility must use only those mechanical devices designed specifically for the safe and relatively comfortable restraint of humans, to include:

(1) commercially available devices; and

(2) devices developed independently by or on behalf of the state MR facility.

(b) A state MR facility may use a commercially available mechanical device that has been altered to accommodate an individual's specific physical needs (e.g., a physical impairment or obesity) or a mechanical device developed independently by or on behalf of the state MR facility only if its use has been approved by the director of State MR Facilities in the department's Central Office.

(1) Before the state MR facility requests approval from the director of State MR Facilities to use such a mechanical device, a written description of the mechanical device and its intended use (with pictures and sketches, as appropriate) must be reviewed and approved by a committee at the state MR facility that includes the following staff:

(A) medical director or designee;

(B) nursing director or designee;

(C) director of psychology;

(D) director of habilitation services;

(E) safety officer; and

(F) rights officer.

(2) If the committee approves the mechanical device, a written description of the mechanical device and its intended use (with pictures and sketches, as appropriate) will be submitted to the head of the state MR facility, who must decide within 10 working days whether to request approval from the director of State MR Facilities to use the mechanical device.

(3) Within 10 working days of receiving a request for approval to use a mechanical device, the director of State MR Facilities

must review the request and notify the head of the state MR facility whether or not the request has been approved.

(c) Staff will inspect a mechanical device before and after each use to ensure the device is in good repair and without tears or protrusions that may cause injury. A damaged mechanical device must be repaired before it can be used in the restraint of an individual. If a damaged mechanical device cannot be repaired to make it safe for use in the restraint of an individual, it must be discarded.

(d) Staff must ensure that a mechanical device is not secured so tightly that the individual's circulation or breathing is impaired or so loosely that the individual's skin is chafed. Staff must exercise caution when using mechanical devices such as a camisole or straitjacket that may impair the individual's balance or interfere with the individual's ability to break a fall.

(e) Staff may use two or more mechanical devices simultaneously in the restraint of an individual in a behavioral emergency if a physician authorizes their use.

(f) The following mechanical devices may be used in the restraint of an individual.

(1) Anklets--Padded bands of cloth or leather that are secured around the individual's ankles or legs using hook-and-loop (e.g., Velcro brand) tape or buckle fasteners and attached to a stationary object (e.g., bed or chair frame).

(2) Arm splints or elbow immobilizers--Strips of any material with padding that extend from below to above the elbow and are secured around the arm with ties or hook-and-loop (e.g., Velcro brand) tape. If appropriate, they should be secured such that the individual has full use of the hands.

(3) Belts--A cloth or leather band that is fastened around the waist and secured to a stationary object (e.g., chair frame) or used for securing the arms to the sides of the body.

(4) Camisole--A sleeveless cloth jacket which covers the arms and upper trunk and is secured behind the individual's back.

(5) Chair restraint--A padded, stabilized chair which supports all body parts and is used with anklets or wristlets to prevent the individual from standing up without assistance.

(6) Helmets--A plastic, foam rubber, or leather head covering, such as sports helmets, that may include an attached face guard.

(7) Mittens--A cloth, plastic, foam rubber, or leather hand covering, such as boxing and other types of sport gloves, that are secured around the wrist or lower arm with elastic, hook-and-loop (e.g., Velcro brand) tape, ties, paper tape, pull strings, buttons, or snaps.

(8) Restraint board--A padded, rigid board to which an individual is secured face-up, unless that position is clinically contraindicated for that individual. This device will not be used in the restraint of an individual in a behavioral emergency.

(9) Restraining net--Mesh fabric that is placed over an individual's upper and lower trunk with the head, arms, and lower legs exposed; the net is secured over a mattress to a bed frame and is never placed over the individual's head.

(10) Straitjacket--A heavy canvas jacket that is open in the back and has sleeves that are stitched closed. The individual's arms are crossed in front and the sleeves secured with ties at the back.

(11) Ties--A length of cloth or leather used to secure approved mechanical restraints (i.e., mittens, wristlets, arm splints, belts, anklets, vests, etc.) to a stationary object (i.e., bed or wheelchair frame) or to other mechanical restraints.

(12) Transport jacket--A heavy canvas sleeveless jacket that encases the arms and upper trunk, fastens with hook-and-loop (e.g., Velcro brand) tape or roller buckles, and is held in place by a strap between the legs.

(13) Vest--A sleeveless cloth jacket which covers the upper trunk of the individual. The vest may be secured to a stationary object (e.g., bed or chair frame).

(14) Wristlets--Padded cloth or leather bands that are secured around the individual's wrists or arms using hook-and-loop (e.g., Velcro brand) tape or buckle fasteners and attached to a stationary object (e.g., bed or chair frame).

(g) The following mechanical devices must not be used in the restraint of an individual.

(1) metal wrist or ankle cuffs;

(2) rubber bands, ropes, and cords, unless part of an approved device;

(3) long ties and leashes, including halter leashes;

(4) restraining sheets attached to any stationary object other than a bed;

(5) padlocks; and

(6) barred enclosures with tops, including crib-style bed with mesh tops.

(h) A mechanical device that is not described in subsection (f) of this section but is not expressly forbidden in (g) of this section may be used in the restraint of an individual if its use is approved as described in subsection (b) of this section.

§415.362. Additional Reporting and Documentation Requirements When Restraint is Used in a Behavioral Emergency or as Part of a Behavior Therapy Program.

(a) Reports to head of the state MR facility.

(1) Staff will notify the head of the state MR facility or designee immediately, but in no case more than one hour after learning of a serious injury to or death of an individual that occurs while the individual is in restraint.

(2) Within one working day of receiving the notice described in paragraph (1) of this subsection, the head of the state MR facility or designee must:

(A) notify the State MR Facilities Division in Central Office of the serious injury or death; and

(B) name one or more staff to investigate the serious injury or death.

(3) The staff named to investigate the serious injury or death must submit a written report on the results of the investigation to the head of the state MR facility or designee no later than five working days after the notice of the serious injury or death required in paragraph (1)(A)-(B) of this subsection.

(A) The written report will be reviewed by the head of the facility, who will take prompt appropriate corrective action, if determined to be necessary.

(B) A copy of the report will be submitted to the State MR Facilities Division in Central Office.

(4) If the serious injury or death is suspected to be the result of abuse or neglect, staff must make a verbal report immediately, but in no case more than one hour after suspicion or after learning of the incident, to the Texas Department of Protective and Regulatory

Services as described in §417.505 of this title (relating to Reporting Responsibilities of all TDMHMR Employees, Agents, and Contractors: Reports to the Texas Department of Protective and Regulatory Services (TDPRS)).

(b) Reports required by MOU. If the serious injury or death is a reportable incident as described in the memorandum of understanding titled "Reportable Incidents in State Schools, State Centers, State Operated Community-based MHMR Services, and Community Mental Health and Mental Retardation Centers with Intermediate Care Facilities for the Mentally Retarded (ICF/MR)" dated March 25, 1996, the head of the facility will report the incident as described in the MOU.

(c) Reports to Central Office. Each state MR facility must prepare and submit to the State Mental Retardation Facilities division in Central Office a quarterly report on the state MR facility's use of restraint in behavioral emergencies, as part of behavior therapy plans, and to prevent involuntary self-injury. The report must include the following:

(1) number of incidents and types of restraint and the number of individuals restrained during each month of the fiscal year quarter, with designation of how many individuals were under 18 years of age;

(2) the number of serious and non-serious injuries and the injury rate for each month of the fiscal quarter, with designation of how many individuals were under 18 years of age; and

(3) number of deaths that occur within 24 hours of the use of restraint for each month of the fiscal quarter, with designation of how many individuals were under 18 years of age.

(d) Analysis of data. The head of the state MR facility must ensure ongoing analysis of data collected as described in subsections (a) and (c) of this section to identify issues or emerging trends and to develop appropriate responses.

§415.363. Staff Training in the Use of Restraint.

(a) The state MR facility must inform each employee whose work responsibilities involve direct contact with individuals of the employee's roles and responsibilities under this subchapter and under written facility policy and procedures.

(b) Before an employee assumes work responsibilities that might require the employee to participate in restraint, the state MR facility will ensure that the employee receives training and demonstrates the competencies:

(1) in the department's approved restraint training program as outlined in the course descriptions in the TDMHMR Operating Instructions of Internal Facilities Management for Human Resources: Minimum Training Requirements (407. 12: §7);

(2) in sections of the PMAB training program as appropriate to the employee's position and responsibilities, and as required under the TDMHMR Operating Instructions of Internal Facilities Management for Human Resources: Minimum Training Requirements (407. 12: §7); and

(3) related to the state MR facility's written policies and procedures as appropriate to the employee's position and responsibilities.

(c) An employee who is a restraint monitor must:

(1) have successfully completed all sections of the department's PMAB curriculum and successfully complete subsequent refresher training annually; and

(2) have successfully completed the state MR facility's training in the following:

(A) cardiopulmonary resuscitation (CPR) and successfully complete subsequent refresher training every two years;

(B) rights of individuals with mental retardation and successfully complete subsequent refresher training annually;

(C) abuse and neglect and successfully complete subsequent refresher training annually;

(D) use of the mechanical devices utilized by the state MR facility and successfully complete subsequent refresher training annually.

(d) Before a nurse or physician assumes work responsibilities that require participation in requesting, ordering, evaluating, or documenting restraint, the state MR facility will ensure that the nurse or physician receives training and demonstrates competence in:

(1) recognizing facility procedures for requesting, ordering, evaluating, or documenting restraint;

(2) recognizing facility-approved personal restraint procedures and mechanical devices;

(3) identifying contraindications specific to facility-approved personal restraint procedures and mechanical devices; and

(4) recalling reporting procedures for restraint-related injuries and deaths.

(e) The state MR facility will ensure that each employee whose work responsibilities require the employee to participate in restraint must demonstrate competence annually in the areas described in subsection (b)(1)-(3) of this section.

(f) Documentation of training and demonstrated competence for each employee will be kept by the state MR facility's human resource development office. Documentation shall include the name of the training, the date of training, the name of the instructor or person who assessed competence, a list of successfully demonstrated knowledge and skills and the date knowledge and skills were assessed.

#### §415.364. Enforcement.

(a) The head of the state MR facility is responsible for the enforcement of this subchapter.

(b) The state MR facility will take appropriate disciplinary action if an employee violates the provisions of this subchapter.

#### §415.365. References.

Reference is made to the following statutes and rules of the department:

(1) 42 CFR §§483.410-483.480 et. seq., (Conditions of Participation for Intermediate Care Facilities for Persons with Mental Retardation);

(2) 42 CFR Title 42 §483.430;

(3) Chapter 405, Subchapter B of this title (relating to Prescribing of Psychotropic Medication--Mental Retardation Facilities);

(4) §405.31 of this title (relating to Emergency Use of Psychotropic Medications);

(5) §405.625 of this title (relating to Rights of Clients Receiving Residential Mental Retardation Services);

(6) Chapter 415, Subchapter I of this title (relating to Behavior Therapy in State Mental Retardation Facilities);

(7) §417.505 of this title (relating to Reporting Responsibilities of all TDMHMR Employees, Agents, and Contractors: Reports

to the Texas Department of Protective and Regulatory Services (TDPRS)); and

(8) "Reportable Incidents in State Schools, State Centers, State Operated Community-based MHMR Services, and Community Mental Health and Mental Retardation Centers with Intermediate Care Facilities for the Mentally Retarded (ICF/MR)" dated March 25, 1996.

#### §415.366. Distribution.

(a) This subchapter shall be distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

(2) executive, management, and program staff in Central Office;

(3) heads of state mental retardation facilities; and

(4) individual advocates and advocacy organizations.

(b) The heads of state mental retardation facilities shall ensure that appropriate staff receive copies of this subchapter.

(c) A copy of this subchapter shall be made available upon request to:

(1) an individual;

(2) the LAR of an individual;

(3) the counsel of record of an individual or LAR;

(4) an actively involved family member or friend of an individual;

(5) a state MR facility employee; or

(6) any interested party.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2004.

TRD-200400177

Rodolfo Arredondo

Chair, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 206-5232



## **SUBCHAPTER I. BEHAVIOR THERAPY IN STATE MENTAL RETARDATION FACILITIES**

### **25 TAC §§415.401 - 415.412**

The Texas Department of Mental Health and Mental Retardation (department) proposes new §§415.401 - 415.412 of new Chapter 415, Subchapter I, governing behavior therapy in state mental retardation facilities.

The new subchapter describes policies and procedures that a state mental retardation facility (state MR facility) must implement to ensure that the health, safety, welfare, rights, and privileges of an individual are protected when a behavior therapy program is recommended by the individual's interdisciplinary team (IDT) to address inappropriate behavior exhibited by the individual. Policies and procedures are outlined in the subchapter that

must be followed by a state MR facility when initiating, monitoring, and reporting behavior therapy programs that utilize highly restrictive procedures or otherwise restrict the rights or privileges of individuals. In addition, the subchapter describes procedures that support and enhance the practice of applied behavior analysis and behavior therapy.

The proposed new subchapter will replace Chapter 405, Subchapter H, governing behavior management--facilities serving persons with mental retardation, which is proposed for repeal contemporaneously in this issue of the *Texas Register*. The department developed the new subchapter and related new Subchapter 412, Subchapter H, governing the use of restraint in state mental retardation facilities, which also is published contemporaneously for public review and comment in this issue of the *Texas Register*, in response to recent and considerable interest at the federal and state levels by legislators and advocate/stakeholder groups, and by Texas and national media in the use of restraint in all institutional settings.

In §415.404, a state MR facility is required to develop and implement written policies and procedures that, among other things, emphasize the department's commitment to providing treatment and habilitation to an individual that is the least restrictive and most effective, supportive, and positive alternative available and to reducing the necessity for the use of behavior therapy programs involving highly restrictive procedures and other restrictions of the rights and privileges of an individual. The state MR facility also is required to describe the process it will follow for obtaining legally adequate consent or other authorization before implementing a behavior therapy program that utilizes highly restrictive procedures or otherwise restricts the rights or privileges of an individual, and detail the training and demonstration of competence requirements for state MR facility staff.

In §415.405, the department describes general principles for the implementation of behavior therapy programs that state, among other things, that an approved behavior therapy program must use only the least intrusive or restrictive intervention that effectively modifies or replaces a targeted behavior. Another principle states that staff must ensure that an individual who exhibits inappropriate behavior is treated with compassion and respect, in addition to being provided with effective and appropriate services.

The development, implementation, and monitoring of effectiveness of behavior therapy programs are addressed in §415.406. Subsection (a) specifies that a written behavior therapy program must be developed for an individual under the following circumstances: the individual's IDT has recommended the use of a highly restrictive procedure or other restriction of the individual's rights or privileges to modify or replace a targeted behavior; or the individual is receiving medications intended primarily for the treatment of a psychiatric disorder. Subsection (b) requires that the written behavior therapy program must be based on the results of a functional analysis, and that a written protocol must be developed if the functional analysis will involve the following: systematic changes in environmental and biological factors that impact the individual; evaluation of a highly restrictive procedure; or a significant risk of injury to the individual or others (e.g., the targeted behavior involves severe self-injury or aggression towards others). Criteria for the development of the behavior therapy program are described in subsection (c). Review and approval procedures are addressed in subsection (d), including approval by the IDT and the state MR facility's Human Rights Committee and behavior therapy committee; in addition, legally adequate

consent must be obtained from the individual or legally authorized representative (if any) before implementation of the behavior therapy program. If the individual does not have the ability to provide legally adequate consent and does not have a legally authorized representative, authorization must be obtained from the head of the state MR facility. If the behavior therapy program will involve the use of a highly restrictive procedure, including restraint, subsection (e) provides additional criteria that the state MR facility must address in the development of the program. Subsection (f) addresses the review by the individual's qualified mental retardation professional (QMRP) to ensure that the behavioral objectives specified in the behavior therapy program are being met. The section also provides that if an individual is involved in a program outside the state MR facility (e.g., attending public school or working), staff of the outside program will be invited to participate in development of the functional analysis and the behavior therapy program.

Requirements for obtaining and documenting legally adequate consent to a functional analysis or a behavior therapy program are described in §419.407.

Section 419.409 requires that a state MR facility must submit a quarterly report to Central Office detailing the number of individuals 18 years of age or older for whom approved behavior therapy programs were in place during each month of the fiscal year quarter; the number of individuals under 18 years of age for whom approved behavior therapy programs were in place during each month of the fiscal year quarter; and a description of highly restrictive procedures utilized in those programs.

Cindy Brown, chief financial officer, has determined that for each year of the first five year period that the proposed new subchapter is in effect, enforcing or administering the rule does have foreseeable implications relating to costs or revenues of state government. State MR facilities may incur additional training costs related to materials, time, and staff in order to comply with the proposed new subchapter. It is not anticipated that the proposed new subchapter will have an adverse economic effect on small businesses or micro-businesses. It is not anticipated that there will be any additional economic cost to persons required to comply with the proposed new subchapter. It is not anticipated that the proposed new subchapter will affect a local economy.

Robert Kifowit, director, State Mental Retardation Facilities, has determined that, for each year of the first five-year period the proposed new subchapter is in effect, the public benefit expected is that the health, safety, welfare, rights, and privileges of an individual residing in state MR facilities are protected when a behavior therapy program is recommended to address the individual's inappropriate behavior.

Comments concerning the proposed new subchapter must be submitted in writing to Linda Logan, director, Policy Development, by mail to P.O. Box 12668, Austin, Texas 78711, by fax to 512/206-4744, or by e-mail to [policy.co@mhmr.state.tx.us](mailto:policy.co@mhmr.state.tx.us) within 30 days of publication of this notice.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 1:30 p.m., Friday, February 13, 2004, in Building 2, Room 240 of the department's Central Office at 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify State Mental Retardation Facilities in Central Office

at least 72 hours prior to the hearing at (512) 206-4538 or at the TDY phone number of Texas Relay, 1/800-735-2988.

The new subchapter is proposed under the Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; THSC, §591.004, which requires the board to ensure the implementation of the Persons with Mental Retardation Act (THSC, Title 7, Subtitle D); and THSC, §592.002, which requires the board to ensure the implementation of certain rights enumerated in THSC, Chapter 592.

The proposed new subchapter affects THSC, Title 7, Subtitle D, and Chapter 592.

§415.401. Purpose.

The purpose of this subchapter is to:

(1) ensure that the health, safety, welfare, rights, and privileges of an individual residing in a state mental retardation facility (state MR facility) are protected when a behavior therapy program is recommended to address the individual's inappropriate behavior;

(2) outline policies and procedures for initiating, monitoring, and reporting behavior therapy programs that utilize highly restrictive procedures or otherwise restrict the rights or privileges of individuals; and

(3) describe procedures that support and enhance the practice of applied behavior analysis and behavior therapy.

§415.402. Application.

This subchapter applies to state MR facilities.

§415.403. Definitions.

The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Behavior therapy--The application of applied behavior analysis principles, cognitive therapies, and skills acquisition to clinical problems with the intent of increasing adaptive behaviors and modifying or replacing targeted behaviors with behaviors that are adaptive and socially acceptable.

(2) Behavior therapy committee--Persons designated by a state MR facility who are knowledgeable about applied behavior analysis and who:

(A) review, approve, and monitor behavior therapy programs; and

(B) review, monitor, and make suggestions concerning the state MR facility's policies and procedures concerning behavior therapy.

(3) Behavior services director--A person appointed by the head of the facility to chair the behavior therapy committee and consult with program directors. The behavior services director shall:

(A) be knowledgeable in the specifics of behavior therapy principles and theory;

(B) be qualified to evaluate published behavior therapy research studies; and

(C) have applied experience with behavior therapy techniques.

(4) CFR (Code of Federal Regulations)--The compilation of federal agency regulations.

(5) Functional analysis--An assessment of environmental and biological factors that may influence inappropriate behavior exhibited by an individual.

(6) Head of the state MR facility--The superintendent of a state school or the executive director of a state center.

(7) Highly restrictive procedures--

(A) Restraint--The use of manual pressure, except for physical guidance or prompting of brief duration, or a mechanical device to restrict:

(i) the free movement or normal functioning of the whole or a portion of an individual's body; or

(ii) normal access by the individual to a portion of the individual's body.

(B) Use of timeout room--Placement of an individual alone and under constant, direct staff supervision in an enclosed area in which positive reinforcement is not available and from which egress is denied by a closed door in accordance with Code of Federal Regulations (CFR), Title 42, §483.450(c), concerning timeout rooms. The term does not include circumstances in which staff remain in close proximity to an individual who has been directed to an area that is removed from regular activities.

(C) Application of aversive stimuli--Application of any stimulus that may be unpleasant or noxious, startling, or painful such that its intended effect is the suppression of the targeted behavior upon which it is immediately contingent. Such stimuli include olfactory, auditory, gustatory, tactile, and other stimuli that may result in physical discomfort or pain.

(D) Effortful task--An activity requiring physical effort by an individual that is directed and may be manually guided by staff. Examples of effortful tasks include, but are not limited to:

(i) Required exercise--A procedure whereby an individual performs and may be guided by staff to perform a series of physical movements that are incompatible with the undesirable response they systematically follow. An example would be the guided movement of a self-injurious individual's arms through a series of positions away from the body.

(ii) Negative practice--A procedure whereby an individual is required to repeatedly engage in an effortful task that is topographically similar to the undesirable response the procedure systematically follows. An example is a program in which an individual who strikes others is required to repeatedly strike a punching bag following each occurrence of hitting others.

(iii) Restitutional overcorrection--A procedure whereby an individual is required to correct the consequences of a disruptive response by performing a task that restores the environment to a state even more improved than existed before the disruptive behavior. An example would be the requirement that a disruptive individual polish all the tables in the residence as a consequence of knocking over one of them.

(iv) Positive practice overcorrection--A procedure whereby an individual is required to repeatedly engage in an appropriate behavior related to the function of the undesirable response the procedure systematically follows. An example is a program in which an individual is required to repeatedly practice an appropriate social behavior contingent upon exhibition of a targeted behavior.

(8) Human Rights Committee--Persons designated by a state MR facility in accordance with 42 CFR §483.440(f)(3), concerning specially constituted committee, who review, approve and

monitor behavior therapy programs and review monitor, and make suggestions about the state MR facility's policies, procedures, and practices concerning behavior therapy programs.

(9) Interdisciplinary team (IDT)--Mental retardation professionals and paraprofessionals and other concerned persons, as appropriate, who assess an individual's treatment, training, and habilitation needs and make recommendations for services.

(A) Team membership always includes:

(i) the individual;

(ii) the individual's LAR, if any; and

(iii) persons specified by a state MR facility who are professionally qualified and/or certified or licensed with special training and experience in the diagnosis, management, needs, and treatment of individuals with mental retardation.

(B) Other participants in IDT meetings may include:

(i) other concerned persons whose inclusion is requested by the individual or the LAR; and

(ii) at the discretion of the state MR facility, persons who are directly involved in the delivery of mental retardation services to the individual.

(10) Individual--A person with mental retardation who resides in a state MR facility.

(11) LAR (legally authorized representative)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor individual, or a guardian of an adult individual.

(12) Legally adequate consent--A term consistent with provisions of the Texas Health and Safety Code (THSC), Title 7, §591.006, which states, in essence, that consent obtained from an individual with mental retardation is legally adequate when each of the following conditions has been met:

(A) legal status: The individual giving the consent:

(i) is 18 years of age or older, or younger than 18 years of age and is or has been married or had the disabilities of minority removed for general purposes by court order as described in the Texas Family Code, Chapter 31; and

(ii) has not been determined by a court to lack capacity to make decisions with regard to the matter for which consent is being sought.

(B) comprehension of information: The individual giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the individual with mental retardation; and

(C) voluntariness: The consent has been given voluntarily and free from coercion and undue influence.

(13) State MR (mental retardation) facility--A state school or state center operated by the department that provides residential services to individuals with mental retardation.

(14) Targeted behavior--An inappropriate behavior exhibited by an individual that the IDT has identified for modification or reduction.

§415.404. General Provisions.

(a) Each state MR facility must have and implement written policies and procedures that:

(1) do not conflict with this subchapter or 42 CFR §483.450(b), concerning the management of inappropriate behavior;

(2) emphasize the department's commitment to:

(A) providing treatment and habilitation to an individual that is:

(i) the least restrictive and most effective alternative available; and

(ii) supportive and positive; and

(B) reducing the necessity for the use of behavior therapy programs involving highly restrictive procedures and other restrictions of the rights and privileges of an individual;

(3) describe the process to be followed for obtaining legally adequate consent or other authorization before implementing a behavior therapy program that utilizes highly restrictive procedures or otherwise restricts the rights or privileges of an individual; and

(4) detail the training and demonstration of competence requirements for state MR facility staff.

(b) The standards in this subchapter take precedence over other applicable standards, including the Conditions of Participation for Intermediate Care Facilities for Persons with Mental Retardation (42 CFR §§483.410-483.480 et. seq.), whenever the other applicable standards are less restrictive.

§415.405. General Principles for Behavior Therapy Programs.

A state MR facility will ensure that the following general principles are incorporated in its written policies and procedures developed as described in §415.404 of this title (relating to General Provisions) and followed during the development, implementation, and monitoring of behavior therapy programs for individuals.

(1) The health, safety, welfare, rights, and privileges of an individual must protected.

(2) Only the least intrusive or restrictive intervention that effectively modifies or replaces a targeted behavior will be employed as part of a behavior therapy program.

(3) Staff do not exercise control over an individual; rather, staff offer an individual the needed and appropriate support that enables the individual to modify or reduce inappropriate behavior.

(4) Staff must attempt to understand an individual's motivation for engaging in inappropriate behavior in order to effectively develop a strategy for making changes to the individual's environment that will result in a modification of or reduction in the inappropriate behavior.

(5) Staff must ensure that an individual who exhibits inappropriate behavior is treated with compassion and respect, in addition to being provided with effective and appropriate services.

§415.406. Development, Implementation, and Monitoring of Effectiveness of Behavior Therapy Programs.

(a) When a behavior therapy program must be developed. An individual's treating psychologist, with input from the individual's interdisciplinary team (IDT), must develop a written behavior therapy program for the individual if:

(1) the IDT recommends the use of a highly restrictive procedure or other restriction of the individual's rights or privileges to modify or replace a targeted behavior; or

(2) the individual is receiving medications intended primarily for the treatment of a psychiatric disorder.

(b) Behavior therapy program developed based on functional analysis.

(1) The individual's treating psychologist will develop the written behavior therapy program based on the results of a functional analysis.

(2) Before a state MR facility implements a functional analysis, a written protocol must be developed if the functional analysis involves any of the following:

(A) systematic changes in environmental and biological factors that impact the individual;

(B) evaluation of a highly restrictive procedure; or

(C) a significant risk of injury to the individual or others (e.g., the targeted behavior involves severe self-injury or aggression towards others).

(3) A written protocol, as described in paragraph (2) of this subsection, must:

(A) be developed by the treating psychologist;

(B) describe the specific procedures or environmental variables to be manipulated;

(C) describe the length of time required for each phase;  
and

(D) be reviewed and approved by:

(i) the individual's IDT;

(ii) the state MR facility's behavior services director; and

(iii) the chair of the state MR facility's Human Rights Committee (HRC).

(4) Before conducting a functional analysis that involves any of the characteristics described in paragraph (2)(A)-(C) of this subsection, a state MR facility must obtain either legally adequate consent or authorization by the head of the state MR facility as described in §415.406 of this title (relating to Requirement to Obtain Legally Adequate Consent or Authorization by the Head of the Facility).

(5) If an individual is involved in a program outside the state MR facility (e.g., attending public school or working), the functional analysis must involve the outside program. Staff of the outside program will be invited to participate in development of the protocol for the functional analysis and, later, in the development of the behavior therapy program.

(c) Development of behavior therapy program.

(1) The determination by an individual's treating psychologist and the IDT of which highly restrictive procedure to use in a behavior therapy program will be based on:

(A) evidence documented in professional and scientific literature of the probability that the specific technique or procedure:

(i) will be effective in modifying or replacing a targeted behavior; and

(ii) is appropriate for an individual's cognitive functioning level, size, weight, known physical, medical, and emotional condition, and age.

(B) the results of the functional analysis conducted as described in subsection (b) of this section.

(2) As required by 40 TAC §90.42(e)(4)(A) (relating to Standards for Facilities Serving Persons with Mental Retardation or Related Conditions), if restraint is the highly restrictive procedure being considered by the individual's IDT as an intervention in a behavior therapy program, a physician must participate on the IDT that authorizes the use of restraint and must concur with the IDT's recommendation concerning the use of restraint.

(3) An individual's behavior therapy program must be developed and implemented as described in this subchapter and 42 CFR §483.450 (Condition of Participation: Client Behavior and Facility Practices).

(4) The written behavior therapy program must:

(A) describe the targeted behavior;

(B) describe reliable and representative baseline data indicating the frequency and severity of the targeted behavior;

(C) summarize the results of a functional analysis of the targeted behavior;

(D) specify behavioral objectives;

(E) describe detailed procedures for implementation of the behavior therapy program to include:

(i) the chosen intervention;

(ii) the recommended replacement behavior and how it is to be introduced; and

(iii) the techniques to prevent the occurrence of the targeted behavior;

(F) provide instructions for an evaluation of the individual by a nurse for injuries and overall well-being after the individual is released from restraint, if restraint is the chosen intervention and the IDT determines that an evaluation by a nurse is necessary;

(G) describe methods for evaluating the program's effectiveness to include collection and analysis of data;

(H) describe procedures for making timely revisions to the program based on an analysis of data if the specified behavioral objectives are not met; and

(I) specify the timeframes for reviewing the program.

(d) Review and approval of and consent to a behavior therapy program. Prior to initiation of a behavior therapy program, the state MR facility must ensure that:

(1) the behavior therapy program is reviewed and approved by:

(A) the individual's IDT;

(B) the state MR facility's Human Rights Committee (HRC); and

(C) the state MR facility's behavior therapy committee;  
and

(2) facility staff obtain and document in the individual's record that legally adequate consent or authorization for the behavior therapy program was obtained as described in §415.406 of this title (relating to Requirement to Obtain Legally Adequate Consent or Authorization by the Head of the Facility) after review and approval of the behavior therapy program by, as appropriate:

(A) the individual with the ability to provide legally adequate consent;

(B) the LAR of an individual who does not have the ability to provide legally adequate consent; or

(C) the head of the state MR facility, if the individual does not have the ability to provide legally adequate consent and does not have an LAR.

(e) Use of a highly restrictive procedure.

(1) Except as described in paragraph (2) of this subsection, a behavior therapy program employing a highly restrictive procedure will not be approved by an individual's IDT, the state MR facility's HRC, or the state MR facility's behavior therapy committee unless a behavior therapy program that employs less restrictive procedures has been systematically attempted and failed to modify or replace the targeted behavior. Procedures for teaching replacement behaviors must be implemented simultaneously.

(A) If a highly restrictive procedure is being considered, evidence must be present in the individual's record that describes other less restrictive and less intrusive interventions, including verbal or other de-escalative interventions, that have been employed and found to be ineffective in modifying or replacing the targeted behavior.

(B) If the highly restrictive procedure being considered is restraint the individual's IDT must:

(i) obtain written authorization from a physician, advanced practice nurse, or physician assistant stating that the individual has no known physical or medical condition that would constitute a risk to the individual during the use of restraint;

(ii) consider other factors that might be contraindications to the use of restraint, including the individual's cognitive functioning level, size, weight, emotional condition, including whether the individual has a history of having been physically or sexually abused, and age; and

(iii) limitations on specific techniques or mechanical devices for restraint as documented in the individual's record in accordance with §415.355(b)(2) and (c) of this title (relating to General Principles for the Use of Restraint).

(C) If the individual's medical condition changes and becomes a contraindication to the use of restraint, the physician must review the authorization.

(D) The state MR facility's HRC must approve any significant increase in the intensity or duration of a highly restrictive procedure, unless the behavior therapy plan specifies the conditions under which an increase may occur.

(2) If an individual's inappropriate behavior is so severe (i.e., life threatening) or of such duration that other therapeutic approaches are currently precluded, the individual's IDT, the HRC, and the behavior therapy committee may approve and the state MR facility may implement a behavior therapy program that employs a highly restrictive procedure without first attempting a behavior therapy program that does not employ highly restrictive procedure.

(f) Review by qualified mental retardation professional.

(1) The individual's QMRP, as defined in 42 CFR §483.430(a), concerning qualified mental retardation professional, must review the behavior therapy program to assess whether the specified behavioral objectives are being met:

(A) during the quarterly review of the Individual Plan of Care; or

(B) more frequently, if the QMRP believes changes in the individual's behavior, functioning level, or physical, or medical condition warrant it.

(2) If the individual's QMRP determines that the behavioral objectives specified in the program are not being met, or that significant changes in the individual's behavior, functioning level, or physical or medical condition have occurred, the QMRP must notify the individual's treating psychologist.

§415.407. Requirement to Obtain Legally Adequate Consent or Authorization by the Head of the Facility.

(a) A state MR facility must obtain legally adequate consent before implementing a behavior therapy program that utilizes a highly restrictive procedure or otherwise restricts the rights or privileges of an individual, except as provided in subsection (b) of this section.

(1) If an individual has the ability to provide legally adequate consent, the state MR facility will attempt to obtain legally adequate consent from the individual.

(2) If an individual lacks the ability to provide legally adequate consent and has an LAR, the state MR facility will attempt to obtain legally adequate consent from the LAR.

(3) Efforts taken by the state MR facility to obtain legally adequate consent from an individual or LAR must be documented in the individual's record.

(b) If an individual lacks the ability to provide legally adequate consent and does not have an LAR, the head of the state MR facility, in accordance with THSC, §592.054, may authorize implementation of a behavior therapy program that utilizes a highly restrictive procedure or otherwise restricts the rights or privileges of an individual

(c) An individual with the ability to provide legally adequate consent or the LAR of an individual who lacks the ability to provide legally adequate consent may:

(1) withhold consent to the implementation of a behavior therapy program that utilizes a highly restrictive procedure or otherwise restricts the rights or privileges of the individual; or

(2) withdraw consent at any time to the continued implementation of a behavior therapy program that utilizes a highly restrictive procedure or otherwise restricts the rights or privileges of the individual.

(d) If legally adequate consent is withheld or withdrawn by an individual or LAR as described in subsection (c) of this section:

(1) state MR facility staff must document in the individual's record the time, date, and circumstances under which the withholding or withdrawal of consent occurred; and

(2) the individual's IDT must convene to discuss alternative interventions to address the targeted behavior.

(e) The consent to the behavior therapy program given by the individual or LAR or authorization by the head of the state MR facility must be reviewed by the individual's IDT and the state MR facility's HRC at least annually and upon any substantive modification of the program or significant change in the individual's medical condition

§415.408. Use of Restraint.

If restraint is used as part of a behavior therapy program, it must be implemented as described in §415.355 of this title (relating to General Principles for the Use of Restraint) and §412.357 of this title (relating to Use of Restraint in a Behavior Therapy Program).

§415.409. Documenting and Reporting Behavior Therapy Programs That Use Highly Restrictive Procedures.



Each state MR facility must prepare and submit to the State Mental Retardation Facilities division in Central Office a report for each fiscal year quarter detailing the implementation of behavior therapy programs that utilize highly restrictive procedures, to include:

(1) the number of individuals 18 years of age or older for whom approved behavior therapy programs were in place during each month of the fiscal year quarter;

(2) the number of individuals under 18 years of age for whom approved behavior therapy programs were in place during each month of the fiscal year quarter; and

(3) a description of highly restrictive procedures utilized in those programs.

§415.410. Staff Training in Behavior Therapy.

(a) The state MR facility must inform each employee whose work responsibilities involve direct contact with individuals of the employee's role and responsibilities under this subchapter and under the state MR facility's written policies and procedures related to this subchapter.

(b) Before an employee assumes work responsibilities that might require the employee to implement procedures described in a behavior therapy program, the state MR facility will ensure that the employee receives training and demonstrates competence in the specific procedures required by the behavior therapy program.

(c) The state MR facility will ensure that each employee whose work responsibilities require the employee to implement procedures described in a behavior therapy program must demonstrate competence in those procedures at least annually, and whenever the procedures required by a behavior therapy program are changed. If an employee does not demonstrate competence in the required procedures, the state MR facility will ensure that the employee receives training and demonstrates competence in those procedures.

(d) Documentation of training and demonstrated competence for each employee will be kept by the state MR facility.

§415.411. References.

Reference is made to the following statutes and regulations:

(1) 42 CFR §§483.410-483.480 et. seq., (Conditions of Participation for Intermediate Care Facilities for Persons with Mental Retardation);

(2) 42 CFR §483.430(a), concerning qualified mental retardation professional;

(3) 42 CFR §483.440(f)(3), concerning specially constituted committee;

(4) 42 CFR §483.450 (Condition of Participation: Client Behavior and Facility Practices);

(5) 42 CFR §483.450(b), concerning the management of inappropriate behavior;

(6) 42 CFR §483.450(c), concerning timeout rooms;

(7) Texas Family Code, Chapter 31;

(8) THSC, Title 7, §591.006;

(9) THSC, §592.054;

(10) §415.355 of this title (relating to General Principles for the Use of Restraint) and §412.357 of this title (relating to Use of Restraint in a Behavior Therapy Program); and

(11) 40 TAC §90.42(e)(4)(A) (relating to Standards for Facilities Serving Persons with Mental Retardation or Related Conditions).

§415.412. Distribution.

(a) This subchapter shall be distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

(2) executive, management, and program staff in Central Office;

(3) heads of state MR facilities;

(4) individual advocates and advocacy organizations, and

(5) Texas Department of Human Services, Long Term Care Division.

(b) The head of the state MR facility shall ensure that appropriate staff receive copies of this subchapter.

(c) A copy of this subchapter shall be made available upon request to:

(1) an individual;

(2) the LAR of an individual;

(3) the counsel of record of an individual or LAR;

(4) an actively involved family member or friend of an individual;

(5) a state MR facility employee; or

(6) any interested party.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2004.

TRD-200400176

Rodolfo Arredondo

Chair, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 206-5232

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**TITLE 34. PUBLIC FINANCE**

**PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

**CHAPTER 1. CENTRAL ADMINISTRATION**

**SUBCHAPTER A. PRACTICE AND PROCEDURES**

**DIVISION 1. PRACTICE AND PROCEDURES**

**34 TAC §1.42**

The Comptroller of Public Accounts proposes an amendment to §1.42, concerning definitions. Paragraph (17) is added to restate the definition of "Tax Division" which was deleted from this rule in 2001.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amended rule will be in providing additional information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Jesse Ancira, General Counsel, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §111.009 and §111.015.

#### §1.42. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (16) (No change.)

(17) Tax Division--The divisions within the agency responsible for the particular action or actions that are the subject of the contested case.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 8, 2004.

TRD-200400118

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 475-0387



## CHAPTER 3. TAX ADMINISTRATION

### SUBCHAPTER V. FRANCHISE TAX

#### 34 TAC §3.544

The Comptroller of Public Accounts proposes an amendment to §3.544, concerning reports and payments. The proposed amendment to subsection (a)(1)(A)(ii), which deletes the reference to the date a foreign corporation's certificate of authority takes effect for purpose of determining the beginning date for foreign corporations, reflects a legislative change made by House Bill 2424, 78th Legislative Session, 2003. The proposed amendment to subsection (a)(1)(B) provides an updated example of an initial report for clarification purposes. The proposed amendment to subsection (h)(2) concerning certain Public Information Report filings, specifies that these reports may be filed electronically, in accordance with House Bill 2424, 78th Legislature, 2003. The proposed amendment to subsection (i) sets out the requirement that a corporation must report within 120 days the results of certain administrative proceedings that affect the corporation's

franchise tax liability, as specified in House Bill 2425, 78th Legislature, 2003.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing current information concerning reporting requirements. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §171.001(b)(2)(B), 171.152, 171.203, and 111.206.

#### §3.544. Reports and Payments.

(a) Reports and due dates.

(1) Each domestic and foreign corporation subject to the franchise tax levied by [the] Tax Code, §171.001, must file an initial franchise tax report, and thereafter an annual franchise tax report, and at the same time must pay the franchise tax and any applicable penalties and interest due by the corporation. It is the responsibility of a receiver to file franchise tax reports and pay the franchise tax of a corporation in receivership. A debtor in possession or the appointed trustee or receiver of a corporation in reorganization or arrangement proceedings under the Bankruptcy Act is responsible for filing franchise tax reports and paying the franchise tax prior to confirming and consummating the plan of reorganization or arrangement.

(A) "Beginning date" means:

(i) for a corporation chartered in this state, the date on which the corporation's charter takes effect; and

(ii) for a foreign corporation, the [earlier of the ] date on which[=]

~~[(1)]~~ the corporation's certificate of authority takes effect; or }

~~[(H)]~~ the corporation begins doing business in this state.

(B) Both the initial report and payment of the tax due, if any, are due no later than 89 days after the first anniversary date of the beginning date. The initial franchise tax report and payment are for the privilege periods beginning on the beginning date and ending on December 31 following the first anniversary of the beginning date. For example, if a Texas corporation is chartered on June 1, 2002 [~~1992~~], the payment due with the initial report will be for the privilege periods from June 1, 2002 [~~1992~~]-December 31, 2003 [~~1993~~]. In addition, when the first anniversary occurs during the period from October 4 through December 31, there must also be computed and paid with the initial report an additional year's tax for the privilege period beginning on January 1 following the first anniversary and ending on the following December 31. For example, if a Texas corporation is chartered on November

1, 2002 [1992], the payment due with the initial report will be for the privilege periods from November 1, 2002 [1992]-December 31, 2004 [1994]. The taxable capital component of the tax computed on the initial report is based on the financial condition as of the last accounting period ending date that is at least six months after the beginning date and at least 60 days before the original due date. If there is no such ending date, then the initial report is based on the financial condition on the last day of the calendar month nearest to the end of the corporation's first year of business. The earned surplus component of the tax computed on the initial report is based on the business done during the period beginning on the beginning date and ending on the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report, or, if there is no such ending date, then ending on the day that is the last day of the calendar month nearest to the end of the corporation's first year of business.

(C) The annual franchise tax report must be filed and the tax paid no later than May 15 of each year. The annual tax is paid for the privilege period of the calendar year in which the report is due. The taxable capital component of the tax computed on an annual report is based on the financial condition as of the last day of the last accounting period ending in the calendar year before the calendar year in which the tax is originally due. If there is no accounting period ending in the previous calendar year, then the taxable capital component should be based on the financial condition as of December 31 of the previous calendar year. The earned surplus component of the tax computed on an annual report is based on the business done during the period beginning with the day after the last date upon which the earned surplus component was based on a previous report, and ending with the last accounting period ending date for federal income tax purposes ending in the calendar year before the calendar year in which the report is originally due. For the 1992 annual report, the earned surplus component is based on the business done during the period beginning with the day after the date upon which the previous report was based, and ending with the last accounting period ending date for federal income tax purposes ending in 1991. A corporation that [which] uses a 52-53 week accounting year end and has an accounting year ending the first four days of January of the year in which the annual report is originally due may use the preceding December 31 as the date through which taxable earned surplus is computed.

(D) See §3.565 of this title (relating to Survivors of Mergers) for special rules concerning corporations that [which] are survivors of mergers.

(E) See §3.545 of this title (relating to Extensions) for extensions of time to file an annual report.

(F) See §3.567 of this title (relating to Additional Tax on Earned Surplus) for information concerning the additional tax imposed by [the] Tax Code, §171.0011.

(G) See §3.572 of this title (relating to 1992 Transition) for transitional information concerning tax rates and privilege periods as a result of certain legislative changes.

(2) The postmark date (or meter-mark if there is no postmark) on the envelope in which the report or payment is received determines the date of filing.

(3) An information report must be filed, even if no tax is due. A corporation must file an initial report as the information report for the privilege periods covered by an initial report. A corporation must file an annual report as an information report for a regular annual privilege period not covered by an initial report.

(4) For reports originally due on or after January 1, 2000, a corporation will not owe any tax if the gross receipts from its entire business for both taxable capital and taxable earned surplus are each less than \$150,000 during the accounting period upon which the report is based. A corporation that does not owe any tax under this subsection must file an information report as authorized by subsection (a)(3) of this section.

(A) For purposes of computing gross receipts from its entire business for taxable earned surplus under this subsection, a corporation must include any gross receipts that would otherwise be excluded from the apportionment factor under [the] Tax Code, §171.1061, concerning the allocation of certain taxable earned surplus to this state.

(B) A corporation whose gross receipts from its entire business for taxable capital are \$150,000 or greater will be required to compute its tax on both tax base components as provided for under [the] Tax Code, §171.002(b), even though its gross receipts from its entire business for taxable earned surplus are less than \$150,000. For example, if a corporation's gross receipts from its entire business for taxable capital are \$175,000 and its gross receipts from its entire business for taxable earned surplus are \$125,000, the corporation must compute its tax on both taxable capital and taxable earned surplus.

(C) A corporation whose gross receipts from its entire business for taxable earned surplus are \$150,000 or greater will be required to compute its tax on both tax base components as provided for under [the] Tax Code, §171.002(b), even though its gross receipts from its entire business for taxable capital are less than \$150,000. For example, if a corporation's gross receipts from its entire business for taxable earned surplus are \$175,000 and its gross receipts from its entire business for taxable capital are \$125,000, the corporation must compute its tax on both taxable capital and taxable earned surplus.

(b) Penalty and interest on delinquent taxes.

(1) [The] Tax Code, §171.362, imposes a 5.0% penalty on the amount of franchise tax due by a corporation that [which] fails to report or pay the tax when due. If any part of the tax is not reported or paid within 30 days after the due date, an additional 5.0% penalty is imposed on the amount of tax unpaid. There is a minimum penalty of \$1.00. Delinquent taxes accrue interest beginning 60 days after the due date. For example, if payment is made on the 61st day after the due date, one day's interest is due.

(A) For reports originally due on or before December 31, 1999, the following rates of interest are in effect as indicated. Simple interest accrues at an annual rate of 6.0% through March 31, 1980; at an annual rate of 7.0% from April 1, 1980-December 31, 1981; and, beginning January 1, 1982, at 10% per annum, for taxes due before September 1, 1991. For taxes due on or after September 1, 1991, simple interest accrues at an annual rate of 12% on all delinquent taxes.

(B) For reports originally due on or after January 1, 2000, the annual rate of interest on delinquent taxes is the prime rate plus one percent, as published in The Wall Street Journal on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday.

(2) When a corporation is issued an audit assessment or other underpayment notice based on a deficiency, penalties under [the] Tax Code, §171.362, and interest are applied as of the date that the underpaid tax was originally due, including any extensions, not from the date of the deficiency determination or date the deficiency determination is final.

(3) A deficiency determination is final 30 days after the date on which the service of the notice of the determination is completed. Service by mail is complete when the notice is deposited with the United States Postal Service.

(A) The amount of a determination is due and payable 10 days after it becomes final. If the amount of the determination is not paid within 10 days after the day it became final, a penalty under [the] Tax Code, §111.0081, of 10% of the tax assessed will be added. For example, if a deficiency determination is made in the amount of \$1,000 tax (plus the initial penalty and interest), but the total amount of the deficiency is not paid until the 41st day after the deficiency notice is served, \$1,200 plus interest would be due (i.e., \$1,000 tax, \$100 initial penalty for not paying when originally due, \$100 penalty for not paying deficiency determination within 10 days after it became final, plus interest accrued to the date of payment at the applicable statutory rate).

(B) A petition for redetermination must be filed within 30 days after the date on which the service of the notice of determination is completed, or the redetermination is barred.

(C) A decision of the comptroller on a petition for redetermination becomes final 20 days after service on the petitioner of the notice of the decision. The amount of a determination is due and payable 20 days after a comptroller's decision is final. If the amount of the determination is not paid within 20 days after the day the decision becomes final, a penalty under [the] Tax Code, §111.0081 of 10% of the tax assessed will be added. Using the previous example, on the 41st day after service of the comptroller's decision, \$1,200 plus interest would be due (i.e., \$1,000 tax, \$100 initial penalty, \$100 additional penalty and the applicable accrued interest).

(4) A jeopardy determination is final 20 days after the date on which the service of the notice is completed unless a petition for redetermination is filed before the determination becomes final. Service by mail is complete when the notice is deposited with the United States Postal Service. The amount of the determination is due and payable immediately. If the amount determined is not paid within 20 days from the date of service, a penalty, under [the] Tax Code, §111.022, of 10% of the amount of tax and interest assessed will be added.

(5) If the comptroller determines that a corporation exercised reasonable diligence to comply with the statutory filing or payment requirements, the comptroller may waive penalties or interest for the late filing of a report or for a late payment. The corporation requesting waiver must furnish a detailed description of the circumstances that [which] caused the late filing or late payment and the diligence exercised by the corporation in attempting to comply with the statutory requirements. See §3.5 of this title (relating to Waiver of Penalty or Interest) for additional information.

(6) If a corporation fails to comply with Tax Code, §171.212, the corporation is liable for a penalty of 10% of the tax that should have been reported and had not previously been reported to the comptroller under §171.212. This penalty is in addition to any other penalty provided by law and is effective for audits or other adjustments by the Internal Revenue Service or a competent authority other than the Internal Revenue Service that became final on or after June 20, 1997.

(c) Consolidated reporting. A consolidated or combined report is not allowed.

(d) Amended reports. In filing an amended report, the corporation must type or print on the report, immediately above the corporation name, the phrase "Amended Report." The report should be forwarded with a cover letter of explanation, with enclosures necessary to support

the amendment. Applicable penalties and interest must be reported and paid along with any additional amount of tax shown to be due on the amended report. See subsection (i) of this section for information concerning the statute of limitations.

(1) A corporation may file an amended report for the purpose of correcting a mathematical or other error in a report or for the purpose of supporting a claim for refund.

(2) A corporation that [which] has been audited by the Internal Revenue Service must file an amended franchise tax report within 120 days after the Revenue Agent's Report (RAR) is final, if the RAR results in changes to earned surplus amounts reported for franchise tax purposes. An RAR is final when all administrative appeals with the Internal Revenue Service have been exhausted or waived. An administrative appeal with the Internal Revenue Service does not include an action or proceeding in the United States Tax Court or any other federal court.

(3) A corporation whose net taxable earned surplus is changed as a result of an audit or other adjustment by a competent authority other than the Internal Revenue Service must file an amended franchise tax report within 120 days after the adjustment is final. An adjustment is final when all administrative or other appeals have been exhausted or waived. For the purposes of this section, a competent authority includes, but is not limited to, the United States Tax Court, United States District Courts, United States Courts of Appeals, and United States Supreme Court.

(4) A corporation must file an amended franchise tax report within 120 days after the corporation files an amended federal income tax return that changes the corporation's net taxable earned surplus. A corporation is considered to have filed an amended federal income tax return if the corporation is a member of an affiliated group during a period in which an amended consolidated federal income tax return is filed.

(5) Because the 10% penalty provided for in Tax Code, §171.212 only applies to deficiencies, failure to file an amended return in which a refund would result will not cause a 10% penalty to be imposed.

(e) Comptroller. During the course of an audit or other examination of a corporation's franchise tax account, the comptroller may examine financial statements, working papers, registers, memoranda, contracts, corporate minutes, and any other business papers used in connection with its accounting system. In connection with his examination, the comptroller may also examine any of the corporation's officers or employees under oath.

(f) Jeopardy determination. Beginning with reports originally due on or after May 15, 1996, the payment of a jeopardy determination, issued to a corporation for an estimated tax liability shall not satisfy the reporting requirements set forth in the Tax Code, Chapter 171, Subchapter E.

(g) Rate. An annual tax rate of \$6.70 per \$1,000 of net taxable capital and an annual minimum tax of \$150 applies to May 1, 1988-April 30, 1990, of any tax period.

(h) Public information report. Each corporation on which the franchise tax is imposed must file a public information report as described in Tax Code, §171.203.

(1) A public information report is due at the same time each initial and annual report is due.

(2) Beginning with reports originally due on or after January 1, 1996, an officer or director of the corporation must sign the public information report under a certification that:

(A) all information contained in the report is true and correct to the best of the officer's knowledge; and

(B) a copy of the report has been mailed to each person named in the report who is an officer or director and who is not employed by the corporation or a related (at least 10% ownership) corporation on the date the report is filed.

(C) A report that is filed electronically complies with the signature and certification requirements of this provision.

(3) Beginning with reports originally due on or after January 1, 1998, in addition to an officer or director, another authorized person may sign the public information report for purposes of satisfying the signature requirement.

(4) Failure to sign or file a public information report shall result in the forfeiture of corporate privileges as provided by Tax Code, §171.251. If the corporate privileges are forfeited, each officer or director of the corporation may be liable for each debt of the corporation that is created or incurred in Texas after the date on which the report is due and before the corporate privileges are revived, as provided by Tax Code, §171.255.

(5) The provisions of paragraph (4) of this subsection concerning forfeiture of corporate privileges do not apply to a banking corporation or a savings and loan association, as defined in Tax Code, §171.001.

(i) Statute of limitations. Effective September 1, 1995, a final determination resulting from an Internal Revenue Service administrative proceeding (including, effective September 1, 1997, an audit), or a judicial proceeding arising from an administrative proceeding, that affects the amount of franchise tax liability must be reported to the comptroller before the expiration of 60 days after the day on which the determination becomes final. Effective June 20, 2003, a final determination that affects the amount of franchise tax liability must be reported to the comptroller before the expiration of 120 days after the day on which the determination becomes final. See [the] Tax Code, §111.206.

(j) Effective date. This section applies to reports originally due on or after January 1, 1992, unless otherwise specified.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2004.

TRD-200400173

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 475-0387

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### 34 TAC §3.580

The Comptroller of Public Accounts proposes an amendment to §3.580, concerning credit for hiring persons with disabilities. In accordance with House Bill 2424, 78th Legislature, 2003, subsection (c)(2) is to be amended to provide revised limitation guidelines for the credit.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will

be no significant revenue impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing information on claiming a franchise tax credit for hiring persons with disabilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§171.851-171.856.

#### §3.580. Credit for Hiring Persons with Disabilities.

(a) Effective date. This section is effective for reports originally due on or after January 1, 2002, and applies only to wages paid after December 31, 2001.

(b) Credit. Subject to other provisions in this section, a corporation may claim a credit on its franchise tax report for 10% of the wages that the corporation pays to each employee who meets the following qualifications:

(1) the employee, when hired, is either

(A) eligible under 42 U.S.C. §1382 for supplemental security income benefits on the basis of disability or blindness; or

(B) a recipient of social security disability insurance benefits;

(2) the employee is originally employed after December 31, 2001, for a position that is located or based in Texas and remains continuously employed with the corporation in a position that is located or based in Texas for at least six months;

(3) the employee earns at least the minimum wage;

(4) the employee works an average of at least 20 hours a week; and

(5) the employee receives the same benefits that the corporation provides to its other workers.

(c) Limitations.

(1) A corporation may claim the credit only for wages that the corporation has paid to a qualified employee:

(A) for a position that is located or based in Texas; and

(B) for work that is performed before the second anniversary date of that qualified employee's original date of employment.

(2) For reports originally due before January 1, 2004, a [A] corporation may not claim a credit that exceeds 50% of the amount of net franchise tax due, after any other applicable credits are taken, for the report on which the credit is claimed. For reports due on or after January 1, 2004, a corporation may not claim a credit that exceeds 50% of the amount of franchise tax due, before any other applicable tax credits are taken, for the report on which the credit is claimed.

(d) Accounting period. The corporation must use the period upon which earned surplus is based to determine which wages will be considered in computing the credit, even if the tax due on net taxable capital exceeds the tax due on net taxable earned surplus.

(e) Application for Credit. A corporation must claim the credit on forms that the comptroller requires and must file the forms with the franchise tax report on which the credit is claimed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2004.

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Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 20. TEXAS WORKFORCE COMMISSION**

#### **CHAPTER 807. CAREER SCHOOLS AND COLLEGES**

The Texas Workforce Commission (Commission) proposes amendments to Subchapter A, General Provisions, §§807.1-807.2; Subchapter B, Certificates of Approval, §§807.11-807.12, §§807.16-807.17; Subchapter C, Financial Requirements, §807.31, §807.33 and §807.35; Subchapter E, School Director and Administrative Staff, §807.61 and §807.65; Subchapter G, Courses of Instruction, §§807.103-807.104; Subchapter J, Admission, §807.144; Subchapter K, Progress Standards, §807.163; Subchapter M, Cancellation and Refund Policy, §807.191 and §§807.193-807.194; Subchapter Q, Closed Schools, §§807.251-807.252 of Chapter 807, Proprietary Schools. The Commission also proposes the repeal of §807.5 of Subchapter A, General Provisions and new §§807.271-807.282 of Subchapter R, Cease and Desist Orders, for Chapter 807, Proprietary Schools.

Background: Effective January 1, 1972, the Texas Legislature enacted the Texas Proprietary School Act (Act) to provide protection of students in proprietary schools and to provide certification and regulation of proprietary schools. The Act was located in Chapter 32 of the Texas Education Code, and was administered by the Texas Education Agency, Division of Proprietary Schools, Drivers Training, and Veterans Education.

In 1995, Senate Bill 1, the 74th Texas Legislature recodified Chapter 32 to Chapter 132, Texas Education Code, and required that the Texas Employment Commission assume the regulatory function of the system of proprietary schools. During the same legislative session, House Bill 1863 created the Commission to consolidate workforce employment and training related services and the licensing and regulation of proprietary schools. Consequently, as of March 1, 1996, references in the law to the Texas

Employment Commission mean the Texas Workforce Commission.

In 2003, Senate Bills 280 and 1343, 78th Texas Legislature, Regular Session, revised Chapter 132, Texas Education Code, changing all references to "proprietary schools" to "career schools and colleges" and references to "correspondence" to distance education. The bills added the requirement that certain schools apply for, and receive, an exemption. The bills eliminated the requirement for surety bonds and the tuition protection fund and created the career school and college tuition trust account. The tuition trust account is a permanently dedicated trust fund. It is more flexible than the tuition protection fund in handling the payment of refunds to students of closed schools and the teach-out expenses of schools that complete the training of the students of a closed school. The remaining balance in the tuition protection fund on August 31, 2003 was transferred to the tuition trust account.

The bills also gave the Commission the authority to issue a cease and desist order against a career school or college operating without a certificate of approval. The ability to issue a cease and desist order against an unlicensed school after an administrative hearing gives the Commission more flexibility in enforcing the Act's licensing requirements. Insuring that the licensing requirements are followed by all career schools and colleges increases the protections available for students, helps provide students with better quality training providers and supplies employers with an improved pool of trained employees and job applicants.

Through the Act and Career School and College Rules, the Commission Career Schools and Colleges Department licenses and regulates most private post-secondary career schools that offer vocational training or continuing education. The Department also investigates complaints about schools, monitors schools to ensure regulatory compliance, arranges for the disposition of students affected by a school closure and administers the Tuition Trust Account to pay tuition refunds to students when a school closes. In carrying out its regulatory duties, the Career Schools and Colleges Department seeks to provide customer protection for Texas students as well as ensure quality training of the labor force to meet the needs of Texas employers.

The purpose of the rule amendments is to address changes in the statute as well as changes in the career school and college industry from the time when the rules were last revised. Since that time, methods to deliver education have evolved in a number of areas, particularly in the area of distance education. The Internet has created opportunities for new delivery techniques and also has provided new methods for advertising and enrolling students.

The proposed amendments to the Career School and College rules address these issues in order to remove unnecessary requirements and streamline processes in the regulation of Texas career schools and colleges. The proposed amendments completely implement the changes to the Act made by Senate Bills 280 and 1343, 78th Texas Legislature, Regular Session. These changes are consistent with the Governor's vision of limited and efficient State government.

Generally, throughout the chapter the amendments change references to "proprietary schools" to "career schools and colleges," "correspondence" to "distance education," and "protection fund" to "trust account" to be consistent with legislative

changes to the statute. The other specific amendments as well as the reason and purpose of each is described as follows:

Section 807.5 regarding a school's requirement to apply for an exemption is repealed because it is now redundant of legislative changes to the statute.

In §807.11, the amendment deletes the requirement for a surety bond as legislative changes to the statute no longer require a school to obtain a surety bond.

In §807.12, the amendment deletes the requirement for a surety bond as legislative changes to the statute no longer require a school to obtain a surety bond.

In §807.16, the amendment deletes requirements for a school to offer associate degree programs, deferring to the authority of the Texas Higher Education Coordinating Board.

In §807.17, the amendment deletes surety bond claims as a form of penalty or sanction as legislative changes to the statute no longer require a school to obtain a surety bond.

In §807.31, the amendment deletes the reference to bonding as legislative changes to the statute no longer require a school to obtain a surety bond.

In §807.33, the amendment requires new schools to submit a projection of income in order to be assessed for the Tuition Trust Account in accordance with legislative changes to the statute.

In §807.35, the amendment deletes the reference to bonding and substitutes language that corresponds with legislative changes to the statutory definition of a small school.

In §807.61, the amendment requires school directors to be present the majority of the time the school is in operation so that they are accessible to students.

In §807.65, the amendment deletes certain requirements for a director of degree programs, deferring to the authority of the Texas Higher Education Coordinating Board.

In §807.103, the amendment deletes program requirements for degree granting schools, deferring to the authority of the Texas Higher Education Coordinating Board.

In §807.104, the amendment changes "program" to "course of instruction" to make it clear that both programs and seminars must comply with this section concerning penalties related to courses of instruction.

In §807.144, the amendment requires enrollment agreements for long-term seminars to facilitate investigations of student complaints and compute refunds.

In §807.163, the amendments change references to "correspondence" to "distance education" to be consistent with legislative changes to the statute.

In §807.191, the amendments change references to "correspondence" to "distance education" to be consistent with legislative changes to the statute.

In §807.193, the amendments change references to "correspondence" to "distance education" to be consistent with legislative changes to the statute.

In §807.251, the amendment makes technical corrections to language and adds the requirements for a teach-out from §807.252 for continuity.

In §807.252, the amendment changes references to "tuition protection fund" to "tuition trust account" to be consistent with legislative changes to the statute and clarifies the assessment method for new schools. It also removes references to bonds as legislative changes to the statute no longer require a school to obtain a surety bond and deletes the requirements for a teach-out which were moved to §807.251.

The recent legislative changes to the Act gave the Commission the ability to issue cease and desist orders to schools that are operating without a certificate of approval. The following new rules are proposed as a new Subchapter R with the reason and purpose of each described as follows:

Section 807.271, adds definitions used in the subsequent sections on cease and desist orders. This new subsection is added as required by §132.306 of the Act.

Section 807.272 identifies the Executive Director of the Commission as the individual that may issue a statement of charges and hearing notice for the issuance of a cease and desist order. This new subsection is added as required by §132.306 of the Act.

Section 807.273 states the required contents of the statement of charges and hearing notice. This new subsection is added as required by §132.306 of the Act.

Section 807.274 states how the statement of charges and hearing notice will be delivered. This new subsection is added as required by §132.306 of the Act.

Section 807.275 allows for a mutual agreement to postpone a hearing. This new subsection is added as required by §132.306 of the Act.

Section 807.276 states where and how the hearing will be conducted. This new subsection is added as required by §132.306 of the Act.

Section 807.277 states the rules of evidence for the hearing. This new subsection is added as required by §132.306 of the Act.

Section 807.278 states conditions under which the hearing officer may be disqualified or withdraw. This new subsection is added as required by §132.306 of the Act.

Section 807.279 states the hearing procedures. This new subsection is added as required by §132.306 of the Act.

Section 807.280 states the permissible conditions for the granting of a continuance of a hearing. This new subsection is added as required by §132.306 of the Act.

Section 807.281 states how the hearing decision will be rendered, becomes final and the procedures for appeal. This new subsection is added as required by §132.306 of the Act.

Section 807.282 states the effect of the cease and desist order. This new subsection is added as required by §132.306 of the Act.

As required of certificate issuing state agencies by Chapter 2005 of the Government Code, the Commission's minimum, maximum, and median times for processing applications from the date the Commission received the initial applications to the date of the final decision using the Commission's performance in the past 12 months are respectively as follows: The Original Certificate of Approval processing period is a maximum of 390 days, a minimum of 2 days, and a median of 28 days. The Renewal Certificate of Approval processing period is a maximum of 212 days,

a minimum of 2 days, and a median of 49 days. The Change of Owner processing period is a maximum of 163 days, a minimum of 2 days, and a median of 49 days. The Representative processing period is a maximum of 380 days, a minimum of 2 days, and a median of 16 days. The Instructor processing period is a maximum of 143 days, a minimum of 2 days, and a median of 60 days. The Director processing period is a maximum of 70 days, a minimum of 2 days and a median of 23 days. The Director of Education processing period is a maximum of 59 days, a minimum of 4 days and a median of 20 days. The data used to compile the processing periods is based on a mail tracking system. Based on limitations of the mail tracking system, the following qualifiers are provided: processing periods of one day were excluded from the calculations; in an indeterminate number of cases, the data reflects total processing times irrespective of whether additional information was needed to complete the applications; and errors may exist due to processing and data base conversion complications. The processing periods provided in §807.6 were based on a decrease in department staffing and an increase in the number of applications needing to be processed.

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules;

There are no estimated losses or increases in revenue to the state or local governments as a result of enforcing or administering the rules; and

There are no foreseeable implications relating to costs or revenue to the state or local governments as a result of enforcing or administering the rules.

Randy Townsend, Director of Finance, and Michael De Long, Career Schools and Colleges Coordinator, have determined that there will be an effect on small businesses and anticipated economic costs to persons who are required to comply with the proposed rule amendments and new rules. The Commission submitted policy concepts and a draft of the amended and new Career School and College Rules to, as well as met with, the Career School and College Workgroup, which included persons representing the interests of career schools and colleges. The purpose of the Workgroup was to discuss issues pertaining to the revisions of the rules and any costs incurred by the schools with respect to the changes in the rules. Written and oral responses were received on the draft and the concerns of career schools and colleges were also discussed at a Workgroup meeting. During the drafting stage of the proposed rule amendments and new rules, the Commission has worked with the career schools and colleges to incorporate provisions to reduce the costs to small businesses.

Furthermore, the Commission requested analysis from some career schools and colleges to determine the costs of complying with the amended and new rules and to determine whether adverse economic effect would result. Factors will cause the estimates to vary, such as the resources available to the school, the wage rate of the person performing the task, the size of the school, and numerous other variables which will bear upon the actual costs of compliance for a particular school. Incidental

costs such as postage and telephone calls are not included because of their minimal nature.

For rules that do not add requirements on schools but merely detail how the schools should comply with the statute, there are no costs other than those required by the statute. Those costs are directly caused by the statute and not by any additional cost to small businesses caused by the rules. For example, the statute establishes a tuition trust account and states the method of financing the account, the rules merely state some administrative details.

With the exception of the rules listed in the chart below, the Commission anticipates the changes to the rules will present no costs other than those directly required by the statute.

Figure: 40 TAC Chapter 807--Preamble

The comparison between the costs estimated by the career schools and colleges for small and large businesses is apparent from the chart. For the costs which could not be estimated, those costs for small businesses are estimated as equal to or more than those costs of large businesses, due to the various resources available to larger businesses.

The majority of currently approved career schools and colleges are small businesses; however, many of these career schools or colleges are not defined as "small career schools or colleges" pursuant to §132.054 of the Act relating to the Small School Exemption, which states that "The Commission may exempt small career schools and colleges from any requirement of this chapter to reduce the cost to small schools of receiving a certificate of approval." To lessen the costs on small businesses the Commission will continue to use the waiver provisions in §807.4 which would permit a school to request a waiver from all or part of these rules upon a showing of good cause due to undue economic hardship. The Commission intends to reduce the costs for small schools and small businesses in complying with the rules whenever feasible by applying §132.054 of the Act and §807.4 of the rules.

Mark Hughes, Director of Labor Market and Career Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of the proposed rule amendments and new rules.

Michael De Long, Career Schools and Colleges Coordinator, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules shall be to provide rules that are easier to understand and follow, make the process simpler for current and prospective school owners to obtain a certificate of approval and operate a school in compliance with the Act. Local workforce areas may experience economic benefits from increased training of qualified workers and job seekers. Additionally, existing or emerging businesses in the local areas will have the opportunity to access a more qualified workforce. A more qualified workforce may provide businesses with increased efficiencies, lower costs, better products and a growing customer base. The extent to which the economies of local workforce development areas will be affected by the changes in the Career Schools and Colleges Rules will vary greatly across the state and will depend on such factors as population, demographics, the technical experience of the existing workforce, the number of job seekers needing training and access to training resources.

Coordination Activities: In the development of these rules for publication and public comment, the Commission sought and received the involvement of each of Texas' twenty-eight Local



Workforce Development Boards. The Commission provided policy concepts to the Boards for consideration and review pursuant to Texas Labor Code Section 302.064 and the Commission's Resolution Regarding Board Coordination in Policy Development adopted September 24, 2002. Prior and during this rulemaking process, the Commission considered the Boards' contributions. In addition, the Commission held discussions with the Career Schools and Colleges Workgroup and offered to present the policy concepts to the Workforce Leadership of Texas (WLT) Policy Committee regarding the development and implementation of these rules.

Comments on the proposed rule amendments and new rules may be submitted to John Moore, General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas, 78778-0001; telephone number (512) 463-3041; facsimile number (512) 463-1426; e-mail address ruleandpolicy.comments@twc.state.tx.us. The Commission will hold a public hearing if requested.

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §807.1, §807.2

The amendments are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Career Schools and Colleges, and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §301.0015 and §302.002(d), and Texas Education Code, Chapter 132, Career Schools and Colleges.

#### §807.1. Title and Purpose.

(a) These rules may be cited as the Career School and College [Proprietary School] Rules.

(b) The purpose of these rules is to implement and interpret the provisions of the Texas Education Code, Chapter 132, Career Schools and Colleges [Proprietary Schools]. The Commission shall evaluate each school according to the standards of practice set forth in the Act and this chapter. The Commission will provide assistance, whenever possible, in complying with this chapter.

#### §807.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Academic quarter--A period of instruction that includes at least ten weeks of instruction, unless otherwise approved by the Commission.

(2) Academic semester--A period of instruction that includes at least 15 weeks of instruction, unless otherwise approved by the Commission.

(3) Accountant--An independent certified public accountant properly registered with the appropriate state board of accountancy.

(4) Act--Texas Education Code, Chapter 132, Career Schools and Colleges [Proprietary Schools].

(5) Advertising--Any affirmative act designed to call attention to a school or program for the purpose of encouraging enrollment.

(6) Asynchronous distance education--Distance education training that the Commission determines is not synchronous.

(7) Board--A local workforce development board as created under the Workforce and Economic Competitiveness Act.

(8) Clock hour--Fifty minutes of instruction during a 60-minute period.

(9) Commission--The Texas Workforce Commission.

(10) Coordinating Board--The Texas Higher Education Coordinating Board.

(11) Distance education [Correspondence] course--~~Either [Distance education, either]~~ a seminar or a program[;] that is offered to non-residence school students via correspondence or other media from a remote site on a self-paced schedule, excluding programs using interactive instruction.

(12) Distance education[Correspondence] school--A school that offers only distance education[correspondence] courses.

(13) Course of instruction--A program or seminar.

(14) Employment--A graduating or graduate student's employment in the same or substantially similar occupation for which the student was trained.

(15) Good reputation--A person is considered to be of good reputation if the person:

(A) has never been convicted of a felony related to the operation of a school, and the person has been rehabilitated, including completion of parole or probation, from any other convictions that would constitute risk of harm to the school or students as determined by the Commission;

(B) has never been successfully sued for fraud or deceptive trade practices within the last 10 years;

(C) does not own a school currently in violation of legal requirements, has never owned a school with repeated violations, and has never owned a school that closed with violations including, but not limited to, unpaid refunds; and

(D) has not knowingly falsified or withheld information from the Commission.

(16) Job placement--An affirmative effort by the school to assist the student in obtaining employment in the same or substantially similar stated occupation for which the student was trained.

(17) Master student registration list--A comprehensive list with an entry made for any person who signs an enrollment agreement, makes a payment to attend the school, or attends a class. The entry shall be made on the date the first of these events occurs.

(18) Program--A sequence of approved subjects offered by a school that teaches skills and fundamental knowledge required for employment in the stated occupation.

(19) Reimbursement contract basis--A school operating, or proposing to operate, under a contract with a state or federal entity in which the school receives payment upon completion of the training.

(20) Residence school--A school that offers at least one program that includes classroom instruction or synchronous distance education.

(21) School--A "career school or career college," [~~"proprietary school~~,"] as defined in the Act, that includes each location where courses of instruction shall be offered.

(22) Secondary education--Successful completion of public, private, or home schooling at the high school level or obtainment of a recognized high school equivalency credential.

(23) Seminar--A course of instruction that enhances a student's career, as opposed to a program that teaches skills and fundamental knowledge required for a stated occupation. A seminar may include a workshop, an introduction to an occupation or cluster of occupations, a short course that teaches part of the skills and knowledge for a particular occupation, language training, continuing professional education, and review for postsecondary examination.

(24) Seminar school--A school that offers only seminars.

(25) Small school--A "small career school or college" as defined in the Act.

(26) Stated occupation--An occupation for which a program is offered that:

(A) is recognized by a state or federal law or by a state or federal agency as existing or emerging;

(B) is in demand; and

(C) requires training to achieve entry-level proficiencies.

(27) Student--Any individual solicited, enrolled, or trained in Texas by a school.

(28) Subject--A component of a program that includes specific content designed to advance the practical skills and knowledge necessary to prepare a student for employment in the stated occupation. A subject in a school is similar to a course at a community or technical college.

(29) Suspension of enrollments--A Commission sanction that requires the school to suspend enrollments, re-enrollments, advertising, and solicitation, and to cease, in any way, advising prospective students, either directly or indirectly, of the available courses of instruction.

(30) Synchronous distance education--The Commission may determine distance education to be synchronous under the following conditions:

(A) The training is conducted simultaneously in real time, or the training is conducted so that the manner of delivery ensures that even if the instructor and student are separated by time, the clock hours of instruction that the student experiences can be determined; and

(B) There is consistent interaction between the student(s) and the instructor on a schedule that includes a definite time for completion of the program and periodic verifiable student completion/performance measures that allow the application of the progress standards of Subchapter K and attendance standards of Subchapter L of this chapter.

(31) Tour--An inspection of the facilities and equipment pertaining to a course of instruction.

(32) Week--Seven consecutive calendar days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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John Moore  
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#### 40 TAC §807.5

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Career Schools and Colleges, and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed repeal affects the Texas Labor Code, Title 4, §301.0015 and §302.002(d), and Texas Education Code, Chapter 132, Career Schools and Colleges.

#### §807.5. Exemptions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER B. CERTIFICATES OF APPROVAL

#### 40 TAC §§807.11, 807.12, 807.16, 807.17

The amendments are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Career Schools and Colleges, and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §301.0015 and §302.002(d), and Texas Education Code, Chapter 132, Career Schools and Colleges.

#### §807.11. Original Approvals.

A complete application for an original certificate of approval shall consist of the following:

(1) a completed application form provided by the Commission;

[(2) a properly executed school bond;]

(2) ~~[(3)]~~ complete and correct financial statements, as specified in this chapter, demonstrating the school is financially stable and capable of fulfilling its commitments for training;

(3) ~~[(4)]~~ the application fee as specified in this chapter; and

(4) ~~[(5)]~~ any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Commission.

*§807.12. Renewal.*

(a) For small schools, the certificate of approval shall be renewed at least every three years, or more frequently as determined by the Commission. A complete application for renewal of a certificate of approval shall consist of the following:

~~[(1) a properly executed school bond continuation certificate;]~~

(1) ~~[(2)]~~ complete and correct annual financial statements, as specified in this chapter, demonstrating the school is financially stable and capable of fulfilling its commitments for training;

(2) ~~[(3)]~~ the renewal fee and the fee for the tuition trust account ~~[protection fund]~~, if applicable, specified in this chapter; and

(3) ~~[(4)]~~ any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Commission.

(b) For all other schools, the certificate of approval shall be renewed annually. A complete application for renewal of a certificate of approval shall consist of the following:

(1) a completed application for renewal form provided by the Commission;

~~[(2) a properly executed school bond;]~~

(2) ~~[(3)]~~ complete and correct annual financial statements for the most recent fiscal year demonstrating the school is financially stable and capable of fulfilling its commitments for training;

(3) ~~[(4)]~~ the renewal fee and the fee for the tuition trust account ~~[protection fund]~~, if applicable, specified by this chapter; and

(4) ~~[(5)]~~ any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Commission.

(c) The effective, expiration, and issuance dates are indicated on the certificate of approval. The Commission may reflect the date of renewal as the date following the date of expiration of the prior certificate of approval, if the school submitted a timely request for renewal and met all of the requirements contained in this chapter for renewal.

(d) The complete renewal application shall be postmarked on or before the due date as indicated in the Act.

*§807.16. Associate Degrees.*

(a) If a school desires authorization to grant associate degrees, the school shall make application to the Coordinating Board. ~~[and have:]~~

~~[(1) a current certificate of approval from the Commission;~~

~~[(2) an accreditation by an agency or association recognized by the United States Secretary of Education;]~~

~~[(3) a history of conducting classes for the past two years in Texas and compliance with the Act as a non-degree-granting school; and]~~

~~[(4) an ability to fully operate as a degree granting school in compliance with the Coordinating Board's requirements;]~~

~~[(b) A certified and accredited branch campus of a fully and separately accredited school approved to grant a degree in Texas may apply to grant the same degree, provided that the branch campus is also in compliance with all other minimum standards, except for the history of conducting classes for the past two years;]~~

~~[(b) [(e)] The Commission may recognize the authorization to grant degrees upon receipt of a copy of the letter of authorization issued by the Coordinating Board.~~

*§807.17. Penalties and Sanctions Regarding Schools.*

The Commission may impose penalties or sanctions for violations of the Act or this chapter, including:

- (1) collecting a late renewal fee from the school;
- (2) denying the school's application for a certificate of approval;
- (3) revoking the school's certificate of approval;
- (4) placing restrictions on the school's certificate of approval;
- (5) denying, suspending, or revoking the registration of the school's representatives;
- ~~[(6) filing a claim against the school's surety bond;]~~
- (6) ~~[(7)]~~ collecting a late refund penalty from the school;
- (7) ~~[(8)]~~ assessing an administrative penalty;
- (8) ~~[(9)]~~ applying for an injunction against the school;
- (9) ~~[(10)]~~ asking the Attorney General to collect a civil penalty from any person who violates the Act or this chapter;
- (10) ~~[(11)]~~ ordering a peer review of the school;
- (11) ~~[(12)]~~ revoking a program approval;
- (12) ~~[(13)]~~ denying a program approval;
- (13) ~~[(14)]~~ requiring full or partial refunds to students for program violations or deficiencies;
- (14) ~~[(15)]~~ suspending the admission of students to the school;
- (15) ~~[(16)]~~ charging the school an investigation fee to resolve a complaint against the school; and
- (16) ~~[(17)]~~ charging the school interest and penalties on late payments of fee installments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER C. FINANCIAL REQUIREMENTS

### 40 TAC §§807.31, 807.33, 807.35

The amendments are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Career Schools and Colleges, and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §301.0015 and §302.002(d), and Texas Education Code, Chapter 132, Career Schools and Colleges.

#### §807.31. Definitions Relating to Financial Requirements.

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

~~[(1) Alternative bonding—A situation in which the school's bond amount exceeds the highest amount of unearned tuition as shown on the unearned tuition affidavit.]~~

~~(1) [(2)] GAAP--Generally Accepted Accounting Principles.~~

~~(2) [(3)] GAAS--Generally Accepted Auditing Standards.~~

~~(3) [(4)] Sworn statement--A notarized statement including the following language: "I swear or affirm that the information in these statements is true and correct to the best of my knowledge."~~

~~(4) [(5)] Unearned tuition affidavit--A statement of the highest amount of unearned tuition at any time during the most recent fiscal year, the projected highest unearned tuition at any time during the next fiscal year, and the gross amount minus refunds of student tuition and fees earned during the fiscal year in all programs approved under the Act.~~

#### §807.33. Financial Requirements for Original Approvals.

(a) The prospective owner shall furnish the Commission with the following:

(1) for a school owned by a sole proprietor, a reviewed personal balance sheet with notes that disclose the amount of payments for the next five years to meet debt agreements as required by GAAP; or

(2) for all other ownership structures, an audited balance sheet consistent with GAAP and GAAS and certified by an accountant.

(b) The school shall submit a balance sheet, a list of the expected school-related expenses for the first three months of operation of the school, and a sworn statement signed by the owner affirming the availability of sufficient cash to cover projected expenses at the date of licensure. A school currently operating, or proposing to operate, on a reimbursement contract basis may request a waiver of this section from the Commission. Projected expenses may include the following:

(1) employee salaries, listed by position title, including withholding, unemployment taxes, and any other related expenses;

(2) lease payments for equipment listed by the name of the equipment;

(3) lease payments for facilities;

(4) accounting, legal, and other specifically identified professional fees; and

(5) an estimate of other expenses such as advertising, travel, textbooks, office supplies, classroom supplies, printing, telephone, utilities, taxes, and sales commissions.

~~(c) The school shall submit a projection of the gross amount of tuition and fees to be collected during each of the first two years of operation.~~

~~(d) [(e)] The prospective owner shall also furnish such other evidence as may be deemed appropriate by the Commission to establish financial stability.~~

#### §807.35. Financial Requirements for Renewal.

(a) A school shall submit annual financial statements as set forth in this section that shall be:

(1) audited by an accountant and consistent with GAAP;

(2) reviewed by an accountant and consistent with GAAP (except for the first renewal, which must be audited or compiled); or

(3) compiled by an accountant, containing an unearned tuition affidavit and at least one note disclosing the current and long-term liabilities. This note shall be similar to that required by GAAP for reviewed and audited statements. Compiled statements are acceptable under the following conditions:

(A) the gross annual revenue from student tuition and fees, less refunds, is less than or equal to \$100,000, or [is \$50,000 or less];

(B) the courses of instruction are less than one month in length.[: or]

~~[(C) the school maintains alternative bonding.]~~

(b) Each school shall furnish financial statements in association with an accountant annually and not later than 180 days from the close of the school's fiscal year. These statements shall include the following:

(1) balance sheet;

(2) statement of results of operation, which includes a statement of income and retained earnings;

(3) statement of cash flows; and

(4) the gross amount minus refunds of annual student tuition and fees for each school, separated from other revenues unrelated to training.

(c) A school with a gross annual revenue from student tuition and fees, less refunds, less than or equal to \$100,000 [An alternative bonded school] may submit all of the following in lieu of the financial statements required in this section:

(1) an unearned tuition affidavit;

(2) a copy of the annual income tax form filed specifically for the business; and

(3) an owner's sworn statement certifying that the unearned tuition affidavit and the copy of the annual income tax form are true and correct.

(d) A school that is a subsidiary of a corporation may submit, in lieu of the statements required in this section, the annual audited financial statements of the parent corporation provided that:

(1) said statements are accompanied by an audited list of any student tuition refunds payable by the subsidiary school at the close of its fiscal year. The statements shall also be accompanied by an owner's sworn statement reflecting the gross amount minus refunds of

student tuition and fees earned during the fiscal year on all programs approved under the Act; and

(2) the parent corporation ensures that each student enrolled in the subsidiary school receives either the training agreed upon or a refund as provided in the Act, and submits either a certified resolution of its board of directors to this effect or any other evidence as deemed appropriate by the Commission to establish financial responsibility by the parent corporation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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John Moore

General Counsel

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## SUBCHAPTER E. SCHOOL DIRECTOR AND ADMINISTRATIVE STAFF

### 40 TAC §807.61, §807.65

The amendments are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Career Schools and Colleges, and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §301.0015 and §302.002(d), and Texas Education Code, Chapter 132, Career Schools and Colleges.

#### §807.61. *School Director Requirements.*

(a) Each school shall designate one person as the school director.

(b) A person may not concurrently serve as a school director for more than one school.

(c) A school director must be physically present at the school's location for a majority of the time the school is open for regular operation.

#### §807.65. *Director of Degree Programs Requirements.*

(a) A school with a degree program shall have a director of the degree programs as required by the Coordinating Board. [The Commission shall grandfather schools from meeting the director of degree programs requirements contained in this section for a particular director of degree programs provided that the school has submitted the application for approval of the director of degree programs to the Commission prior to the effective date of this section and the application results in approval by the Commission.]

(b) A director of degree programs shall be of good reputation, [and have:]

[(1) a master's degree with three years of work-related or administrative experience within the ten years immediately preceding employment by the school; or]

[(2) a bachelor's degree with five years of work-related or administrative experience within the ten years immediately preceding employment by the school.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER G. COURSES OF INSTRUCTION

### 40 TAC §807.103, §807.104

The amendments are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Career Schools and Colleges, and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §301.0015 and §302.002(d), and Texas Education Code, Chapter 132, Career Schools and Colleges.

#### §807.103. *Program Requirements for Degree Granting Schools.*

A school shall provide evidence to the Commission that they are authorized by the Coordinating Board to offer degree programs.

[(a) The quality, content, and sequence of each subject or program shall be appropriate for the purpose of the school and shall be such that the school may reasonably and adequately achieve the stated objectives of the subject or program by providing graduates of these programs with marketable skills.]

[(b) Prior to graduation students shall demonstrate the attainment of advanced skills as appropriate to the degree.]

[(c) At least 95% of the subjects required for each degree shall be offered in organized classes.]

[(d) A school may contract with another school for the instruction of general education or applied foundation courses if the Coordinating Board has approved that contract.]

#### §807.104. *Penalties Relating to Courses of Instruction.*

(a) If an approved course of instruction [program] is discontinued for any reason, the Commission shall be notified within 72 hours of discontinuance and furnished with the names and addresses of any students who were prevented from completion of the course of instruction [program] due to discontinuance. Should the school fail to make arrangements satisfactory to the students and the Commission for the completion of the course of instruction [program], the full amount of all tuition and fees paid by the students are then due and refundable. Any course of instruction [program] discontinued will be removed from the list of approved courses of instruction [programs].

(b) The Commission may suspend enrollments in a particular course of instruction [program] at any time the Commission finds cause. For purposes of this subsection, cause includes, but is not limited to:

- (1) inadequate instruction;
- (2) unapproved or inadequate curriculum;
- (3) inadequate equipment; or
- (4) inadequate facilities.

(c) If a school begins teaching a course of instruction [program] or revised course of instruction [program] that has not been approved by the Commission, the Commission may require the school to refund to the enrolled students all or a portion of the tuition fees.

(d) If upon review and consideration of an original, renewal, or revised application for course of instruction [program] approval, the Commission determines that the applicant fails to meet the requirements in the Act or this chapter, the Commission shall notify the school, setting forth in writing the reasons for the denial. This may include summaries of peer evaluations from both educators and employers offering similar courses of instruction [programs].

(e) The Commission may revoke approval of a school's course of instruction [program] at any time the Commission finds cause. For purposes of this subsection, cause includes, but is not limited to:

- (1) any statement contained in the application for the course of instruction [program] approval which is untrue;
- (2) the school's failure to maintain the instructors, facilities, equipment, or courses of instruction [programs], or course of instruction [program] outcomes on the basis of which approval was issued;
- (3) advertising made on behalf of the school which is false, misleading, or deceptive, including those that use the word "associate" to describe a degree other than those approved by the Coordinating Board;
- (4) courses of instruction [programs] without clearly stated limited transferability if there are no articulation agreements with other postsecondary institutions in the same geographic area;
- (5) courses of instruction [programs] for which financial aid is advertised but is not available;
- (6) repeated violations by the school that negatively impact the quality of a particular course of instruction [program]; or
- (7) violations by the school of any applicable provision of the Act or this chapter.

(f) A school whose course of instruction [program] approval is denied or revoked shall have the right to appeal. The Commission will conduct hearings in accordance with Commission policies and procedures applicable to the appeal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER J. ADMISSION

### 40 TAC §807.144

The amendments are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Career Schools and Colleges, and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §301.0015 and §302.002(d), and Texas Education Code, Chapter 132, Career Schools and Colleges.

#### §807.144. Enrollment Agreement.

(a) A school does not need an enrollment agreement to enroll a student in a seminar that will be completed within three consecutive calendar days.

(b) For distance education [correspondence] schools, the enrollment agreement shall specify the amount of time allotted to the student to complete the program.

(c) A school shall submit an enrollment agreement to the Commission for approval.

(d) A school shall use only an approved enrollment agreement to enroll students.

(e) The executed enrollment agreement shall include, but is not limited to, the following:

- (1) full and correct name and location of the school;
- (2) program title, tuition, fees, reasonable estimate cost of books and supplies, any other expenses, total cost of the program, items subject to cost change, method of payment and payment schedule, disclosure statement if interest is charged on more than three payments, and detachable buyer's right to cancel if enrollment is procured off campus;
- (3) date training is to begin and program length;
- (4) name, address, and signature of the student;
- (5) statement by the school that the student will receive a copy of the school enrollment agreement and catalog at the time of signing by the student;
- (6) cancellation and refund policy; and
- (7) a Federal Trade Commission statement for holder in due course, unless no loans, grants, or installment payments are involved.

(f) The school shall provide a notice of cancellation, attached to the enrollment agreement, for any student enrolled off the school premises. The notice shall:

- (1) be in duplicate;
- (2) be easily detachable;

(3) be printed in boldface type, with a minimum font of 10 point;

(4) contain the date of the enrollment agreement, name and address of school, the date on which the statutory 72-hour cancellation privilege will expire, and any other provisions as determined by the Commission;

(5) be printed in the same language as used in the enrollment agreement; and

(6) be in such a form that can be used by the student to notify the school of the student's desire to cancel by dating, signing, and mailing or otherwise delivering the form to the school's address shown.

(g) A copy of the enrollment agreement form shall be given to the student and a copy maintained as a part of the student's file.

(h) The Commission may permit a school to submit an abbreviated enrollment agreement for students enrolled on a reimbursement contract basis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 6, 2004.

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John Moore

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 463-2573



## SUBCHAPTER K. PROGRESS STANDARDS

### 40 TAC §807.163

The amendments are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Career Schools and Colleges, and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §301.0015 and §302.002(d), and Texas Education Code, Chapter 132, Career Schools and Colleges.

*§807.163. Progress Requirements for Distance Education [~~Correspondence~~] Schools.*

(a) Distance education [~~Correspondence~~] schools shall evaluate progress as the school receives each lesson assignment. The school shall maintain the record of progress on forms approved by the Commission. Forms shall include:

- (1) the date course materials are mailed to the student;
- (2) the date the lesson assignment is received from the student;
- (3) the grade on a per-lesson basis;
- (4) the instructor's name;

(5) the date graded assignments are returned to the student; and

(6) the final grade for the program with completion date indicated.

(b) If at the end of the time period specified in the enrollment agreement, the student has not completed the program, the student's enrollment shall be terminated.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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John Moore

General Counsel

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For further information, please call: (512) 463-2573



## SUBCHAPTER M. CANCELLATION AND REFUND POLICY

### 40 TAC §§807.191, 807.193, 807.194

The amendments are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Career Schools and Colleges, and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §301.0015 and §302.002(d), and Texas Education Code, Chapter 132, Career Schools and Colleges.

*§807.191. Right to Cancel after Tour.*

(a) Distance education [~~Correspondence~~], combination distance education-residence [~~correspondence-residence~~], and seminars are not required to provide the student a tour.

(b) Any potential student who has not been provided the opportunity to tour the school facilities and inspect the equipment before signing an enrollment contract has an additional three days, excluding Saturdays, Sundays, and legal holidays, following a tour and inspection to cancel enrollment and request a full refund of any money paid to the school and release from all obligations. The student shall sign and date an acknowledgement form certifying the completion of the tour.

*§807.193. Refund Requirements for Residence Schools.*

(a) Students are entitled to a full refund for classes attended if the school does not provide a class with:

- (1) an approved instructor;
- (2) an instructor for whom an application has been properly submitted to the Commission; or
- (3) a temporary instructor for whom the school submitted notice to the Commission.

(b) If a class has no instructor for more than one class period, students are entitled to a full refund for each such class attended.

(c) The length of a program, for purposes of calculating refunds owed, is the shortest scheduled time period in which the program may be completed by continuous attendance of a full-time student.

(d) A school shall calculate refunds for students based upon scheduled hours of classes through the last date of attendance. A school shall not count leaves of absence, suspensions, school holidays, days when classes are not offered, and summer vacations for purposes of calculating a student's refund.

(e) For all schools other than distance education [~~correspondence~~], combination distance education-residence [~~correspondence-residence~~], and seminars, a student may cancel enrollment, request a full refund, and request a release from any obligations to the school within three days, excluding Saturdays, Sundays and legal holidays following:

(1) the first day of the student's scheduled classes if the student is not provided an opportunity to tour the school facilities, which includes inspection of equipment, before signing an enrollment contract; or

(2) the day the tour of the school facilities, including inspection of the equipment, is completed, when provided before the first day of the student's scheduled classes.

*§807.194. Penalties Relating to Refunds.*

(a) A penalty shall be paid on any refund not consummated in a timely manner as required by the Act. The penalty assessment shall begin on the first day following the expiration of the statutorily defined refund period and end on the day preceding the date the refund is consummated.

(b) Penalties assessed on late refunds for grants shall be paid to the tuition trust account [~~protection fund~~] if the amount is \$15 or less. Any other penalty assessed on a school's late payment of student refunds shall be disbursed in the following order of priority:

(1) to the student's account at a lending institution for the balance of principal and interest on the student loan;

(2) to the student for tuition and fees paid directly by the student; and

(3) to the tuition trust account [~~protection fund~~] for any remaining balance of assessed penalty.

(c) If the Commission determines that the method used by the school to calculate refunds is in error or the school does not routinely pay refunds within the time required by the Act, the school shall submit an audited report conducted by an accountant of the refunds due former students that includes any penalty due as specified in the Act. An audit opinion letter shall accompany a schedule of student refunds due, which discloses the following information for the four years prior to the date of the Commission's request:

(1) student information, including name, address, and social security number;

(2) pertinent dates, including last date of attendance and date of termination; and

(3) refund information, including amount of refund with principal, penalty, and any balance due separately stated, payee, and date and check number of payment if payment has been made.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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John Moore

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-2573



## SUBCHAPTER Q. CLOSED SCHOOLS

### 40 TAC §807.251, §807.252

The amendments are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Career Schools and Colleges, and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §301.0015 and §302.002(d), and Texas Education Code, Chapter 132, Career Schools and Colleges.

#### *§807.251. School Closures.*

(a) The Commission may declare a school to be closed when:

(1) written notification is received by the Commission from the school owner stating the school will close;

(2) Commission [~~staff~~] determines that the school facility has been vacated without prior notification of a change of address given to the Commission;

(3) an owner with multiple school locations transfers all students from one school location to another school location;

(4) the school dismisses all students, contrary to the school's class schedule as printed in the school catalog; or

(5) the school fails to maintain the faculty, facilities, equipment, or courses of instruction [~~programs~~] on the basis for which approval was issued.

(b) After the Commission determines that a school will close or is [~~has~~] closed, the Commission will attempt to notify students concerning their options to accept a teach-out [~~program~~] or to receive a proportional tuition refund based on available funds. Notification to students may include constructive notice in news media, student meetings, or mailings to students.

(c) Each teach-out requires approval of the Commission to determine whether the course of instruction is available, reasonable, and comparable with the course of instruction of the closed school. The teach-out is subject to the following conditions:

(1) Transfers of students from a closed school to another school under the same ownership shall not constitute a teach-out.

(2) In order to be eligible for a teach-out, students shall submit a signed statement of acceptance to the teach-out school by the deadline as established by the Commission.

(3) The school offering the teach-out shall give credit for all comparable training received at the closed school, as determined by the Commission.

#### *§807.252. Tuition Trust Account [~~Protection Fund~~].*

(a) In a year in which the Commission determines it is necessary to charge a fee under §132.2415(b) of the Act, each school shall



make a payment to the tuition trust account at the time the school renewal fee is paid. [Each school shall make a payment to the tuition at the time the school renewal fee is paid. The accrued balance is the remaining balance of the tuition protection fund less the sum of the amount of unpaid student refunds and teach-out claims not yet disbursed from the tuition protection fund. The amount in the tuition protection fund, as provided in the Act, is the accrued balance as described herein.]

(b) The amount in the tuition trust account, as provided in the Act, is an accrued balance. The accrued balance is the cash balance of the tuition trust account less the sum of the accrued liabilities from unpaid student refunds and teach-out claims.

(c) [(b)] Disbursements shall be made from the tuition trust account [protection fund] for student refunds and reimbursable teach-out expenses incurred during each 12-month period ending August 31, and shall be:

(1) made first for student refunds in accordance with §132.2415(d) of the Act [on a proportional basis];

(2) disbursed for reimbursable teach-out expenses based upon remaining funds; and

(3) calculated after [anticipated bond funds and] other funding sources have been determined.

[(e) Each teach-out program requires approval of the Commission to determine whether the program is available, reasonable, and comparable with the program of the closed school. The teach-out program is subject to the following conditions:]

[(1) Transfers of students from a closed school to another school under the same ownership shall not constitute a teach-out program.]

[(2) In order to be eligible for a teach-out program, students shall submit a signed statement of acceptance to the teach-out school by the deadline as established by the Commission.]

[(3) The teach-out school shall give credit for all comparable training received at the closed school, as determined by the Commission.]

(d) Following the graduation or termination of the students from the teach-out school, the teach-out school shall determine actual expenses and submit a claim for reimbursement to the Commission on or before the date provided in the application packet. The teach-out school shall:

(1) not claim expenses for facilities, equipment, utilities, or other items which were owned, rented, used, or otherwise obligated by the school prior to the Commission's approval of the teach-out program, even though such items may be used for the teach-out program;

(2) be limited to expenses for tuition and fees that are non-recoverable from all financial resources, including grants and loans; and

(3) ensure that the sum of the tuition and fees paid to the student's account at the closed school and the teach-out school is the lesser amount the student would have been charged for the complete program at the closed school or the teach-out school.

(e) For schools in their first two years of operation that have not been required to furnish financial statements to comply with §807.35(b), the payment to the tuition trust account shall be calculated at the rate determined by the Commission using the projected gross amount of tuition and fees, as required in §807.33(c) of this chapter, to be charged by the school for the year in which the payment is

collected. Once the school has submitted the actual amount of tuition and fees collected by the school in compliance with §807.35(b) of this chapter, the Commission shall reconcile the projected and actual amounts of tuition and fees collected. Upon reconciliation, the Commission shall determine if the school is entitled to a refund or must pay an additional amount to the tuition trust account.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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John Moore

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 463-2573

## SUBCHAPTER R. CEASE AND DESIST ORDERS

### 40 TAC §§807.271 - 807.282

The new rules are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Career Schools and Colleges, and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed new rules affect the Texas Labor Code, Title 4, §301.0015 and §302.002(d), and Texas Education Code, Chapter 132, Career Schools and Colleges.

*§807.271. Definitions Relating to Cease and Desist Orders.*

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Hearing--hearing is an informal, orderly, and readily available proceeding held before an impartial hearing officer. At hearing, a party may present evidence to show that the request for the issuance of a cease and desist order should be granted or denied.

(2) Hearing officer--hearing officer is a Commission employee designated to conduct a fair hearing and issue written findings of fact, conclusions of law and an administrative decision concerning the request for the issuance of a cease and desist order.

(3) Party--the person or Commission, with the right to participate in the hearing authorized by the Act.

(4) Person--Any individual, firm, partnership, association, corporation or other private entity or combination that is allegedly operating a career school or college without a certificate of approval issued by the Commission under the Act.

*§807.272. Statement of Charges and Notice of Hearing on Cease and Desist Orders.*

Upon application by the staff of the Commission, if it is believed a person is operating a career school or college without a certificate of approval in violation of §132.151 of the Act, the Executive Director

may issue a statement of charges and notice of hearing to consider the issuance of a cease and desist order.

§807.273. Contents of Statement of Charges and Notice of Hearing. The statement of charges and notice of hearing issued by the Executive Director must contain the following information:

- (1) the name and last known address of the person against whom the order may be entered;
- (2) a short and plain statement of the reasons the Commission believes the person is operating a career school or college without a certificate of approval;
- (3) a copy of the Commission's Career School and College Rules, Title 40, Chapter 807 of the Administrative Code; and
- (4) the date, time and location of the hearing.

§807.274. Service of Statement and Charges and Hearing Notice for the Issuance of Cease and Desist Orders.

The statement of charges and notice of hearing to consider a cease and desist order shall be served by Certified Mail, Return Receipt Requested, on the person against whom the order may be entered. Notice is presumed received 5 days from the date it is mailed by the Executive Director.

§807.275. Agreements to Hold the Hearing at a Later Date. Agreements to hold the hearing at a later date must be mutual, in writing and submitted to the designated hearing officer no later than 2 days prior to the date of the scheduled hearing.

§807.276. Hearing.

(a) The hearing for consideration of the issuance of a cease and desist order shall be held in person before a hearing officer appointed by the Commission and conducted in Austin, Texas.

(b) At the hearing, the Commission shall present evidence in support of its request for the issuance of the cease and desist order demonstrating that the person is operating a career school or college without a certificate of authority.

(c) The person or the person's hearing representative may present evidence to rebut the Commission's request for the issuance of the cease and desist order.

§807.277. Evidence.

(a) Evidence Generally. The parties are not bound by technical rules of evidence. Evidence will be admitted and given probative effect if it possesses probative value and is relevant as determined by the hearing officer.

(b) Exchange of Documentary Evidence. Any documentary evidence to be presented during the hearing shall be exchanged with all parties with a copy to the hearing officer 5 days in advance of the hearing. A party has the right to review, upon request, any documentary materials submitted to or by the hearing officer.

(c) Stipulations. The parties, with the consent of the hearing officer, may agree in writing to the facts involved.

(d) Discovery. The hearing officer may order other forms of discovery deemed appropriate.

(e) Experts and Evaluations. The hearing officer may order, on its own motion or at a party's request and expense, if relevant and useful, an independent expert or a professional evaluation from a source satisfactory to the parties and the Commission.

(f) Ex parte communications. Private (ex parte) communications of information, whether oral or written, about the substantive issues concerning the hearing are allowed only if the substance is shared

with all parties. The hearing officer will provide all parties with the oral or written information.

(g) Confidential information. Statutorily confidential information shall be protected in accordance with state and federal law.

§807.278. Hearing Officer Disqualification and Withdrawal.

(a) A hearing officer is disqualified if the hearing officer directly participated in the recommendation to set the hearing to consider the issuance of a cease and desist order. The hearing officer participated if the hearing officer:

(1) reviewed either the file or a summary of it to assist in making the recommendation; or

(2) has a personal interest in the outcome of the hearing.

(b) The hearing officer may withdraw from the hearing to avoid the appearance of impropriety or partiality. Upon withdrawal, the Commission will select an alternate hearing officer.

§807.279. Hearing Procedure.

(a) General Procedure. All hearings shall be conducted informally and in such manner as to ascertain the substantial rights of the parties. The hearing officer shall develop the evidence. All issues relevant to the request for the issuance of a cease and desist order shall be considered and addressed.

(1) Presentation of Evidence. When a party appears, the hearing officer shall place the party and any witnesses under oath, examine such party and the party's witnesses, if any, and allow presentation of witnesses and other evidence by each party as may be pertinent.

(2) Cross-Examination. The parties, witnesses and evidence are subject to cross-examination by the other parties or the hearing officer. A party has the right to object to and confront evidence offered at hearing by the hearing officer or the other parties.

(3) Additional Evidence. The hearing officer, with or without notice to any of the parties, may request, receive and enter into the record such additional evidence as necessary for a full and fair hearing on the matter, provided that a party shall be given an opportunity to rebut such evidence if it is to be used against the party's interest.

(b) Hearing Representative. Each party may authorize a hearing representative to assist in presenting the argument and evidence of the party. A hearing representative is any individual authorized by a party who assists the party in presenting its argument and evidence.

(c) Records.

(1) The hearing shall be tape-recorded and the hearing record will include the audio-tape of the proceeding and any relevant evidence relied on by the hearing officer in reaching the decision, including any electronic printouts.

(A) A party may request a copy of the audio-taped hearing at no cost.

(B) A party requesting a transcript of a proceeding must pay the cost of transcription.

(2) The hearing record must be maintained as long as required by federal or state law.

§807.280. Continuance of Hearing.

(a) A continuance of a hearing may be ordered at the discretion of the hearing officer if:

(1) there is insufficient evidence upon which to make a decision;

(2) a party needs additional time to examine evidence presented at the hearing;

(3) the hearing officer considers it necessary to consult additional sources for information or testimony; or

(4) any other reason deemed appropriate by the hearing officer.

(b) The hearing officer must advise the parties of the reason for the continuance and any additional information required. Any testimony taken by the hearing officer at the continuance of the hearing must be taken under oath and recorded. The parties will have an opportunity to rebut any additional evidence.

§807.281. Hearing Decision and Final Review by the Commissioners.

(a) Within 10 days after the hearing is held, the hearing officer shall issue a written decision granting or denying the request for the issuance of a cease and desist order that includes findings of fact and conclusions of law. The hearing decision shall be mailed by Certified Mail, Return Receipt Requested, and is presumed received 5 days from the date it is mailed. The hearing officer's decision is final unless an appeal is filed under subsection (b) of this section.

(b) A party that is not satisfied with the decision of the hearing officer may file a written appeal of the decision to the Commission for a final review no later than the 15th day after receipt of the hearing decision. The written appeal shall contain the party's arguments as to why the decision of the hearing officer should be reversed. A party may request oral argument on the written appeal before the Commission. If oral argument is approved, each party or its hearing representative may present argument in support of its position.

(c) Upon receipt of the written appeal of the hearing officer's decision, the Commission shall consider the appeal and issue a decision within 30 days. If oral argument is requested by a party and approved, the Commission shall schedule and hold oral argument within 20 days of receipt of the written appeal. The Commission shall consider the appeal on the basis of the record made before the hearing officer. The decision of the Commission shall be mailed by Certified Mail, Return Receipt Requested, and is presumed received 5 days from the date it is mailed.

§807.282. Effect of the Cease and Desist Order.

(a) If the request for the issuance of a cease and desist order is granted, the Executive Director shall issue a cease and desist order against the person that is found operating a career school or college without a certificate of approval in violation of §132.151 of the Act.

(b) The cease and desist order shall be delivered by Certified Mail, Return Receipt Requested, and is presumed received 5 days from the date it is mailed.

(c) From the date of receipt of the issuance of the cease and desist order, the person must completely cease and desist operating the career school or college.

(d) The cease and desist order shall remain in effect until the person comes into complete compliance with the Act, or unless otherwise provided by the order of the Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 6, 2004.  
TRD-200400036

John Moore

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-2573

## **TITLE 43. TRANSPORTATION**

### **PART 1. TEXAS DEPARTMENT OF TRANSPORTATION**

#### **CHAPTER 1. MANAGEMENT**

##### **SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS**

###### **43 TAC §1.3**

The Texas Department of Transportation (department) proposes amendments to §1.3, concerning meetings of the Texas Transportation Commission (commission).

###### **EXPLANATION OF PROPOSED AMENDMENTS**

Subsection (c) of §1.3 provides that the commission may act only by majority vote of its membership. Senate Bill 409, 78th Legislature, Regular Session, 2003, increased the membership of the commission from three commissioners to five. Requiring a majority vote of the membership for a five-member commission could present a hardship under certain circumstances. For example, if only three commissioners were able to attend a commission meeting, and one of those commissioners was required to abstain on a particular agenda item due to a conflict, the commission would be unable to take action. The proposed amendment removes subsection (c) so that the commission could take action by majority vote of the commissioners attending the meeting.

###### **FISCAL NOTE**

James Bass, Director, Finance Division, has determined that for each of the first five years the amendment as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendment. There are no anticipated economic costs for persons required to comply with the amendment as proposed.

Richard Monroe, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendment.

###### **PUBLIC BENEFIT**

Mr. Monroe has also determined that for each of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendment will be preserving the ability of the commission to effectively conduct its business. There will be no adverse economic effect on small businesses.

###### **SUBMITTAL OF COMMENTS**

Written comments on the proposed amendment may be submitted to Richard Monroe, General Counsel, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on February 23, 2004.

STATUTORY AUTHORITY: The amendment is proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: Transportation Code, §201.051 and §201.054.

§1.3. *Commission Meetings.*

(a) - (b) (No change.)

~~[(e) The commission may act only by majority vote of its membership.]~~

(c) ~~[(d)]~~ The chair may create subcommittees, appoint commissioners to subcommittees, and receive the reports of subcommittees to the commission as a whole. A formal meeting of a subcommittee will follow the procedures set forth in the Open Meetings Act, Government Code, Chapter 551, but compliance is not required for an

informal meeting of two commissioners if the informal meeting would not otherwise be independently subject to the Open Meetings Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 9, 2004.

TRD-200400138

Richard D. Monroe

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: February 22, 2004

For further information, please call: (512) 463-8630

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 1. ADMINISTRATION

### PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

#### CHAPTER 255. FINANCE

##### 1 TAC §255.4

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Commission on State Emergency Communications has been automatically withdrawn. The amended section as proposed appeared in the July 4, 2003 issue of the *Texas Register* (28 TexReg 5011).

Filed with the Office of the Secretary of State on January 7, 2004.  
TRD-200400072



##### 1 TAC §255.5

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Commission on State Emergency Communications has been automatically withdrawn. The amended section as proposed appeared in the July 4, 2003 issue of the *Texas Register* (28 TexReg 5012).

Filed with the Office of the Secretary of State on January 7, 2004.  
TRD-200400073



##### 1 TAC §255.7

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Commission on State Emergency Communications has been automatically withdrawn. The amended section as proposed appeared in the July 4, 2003 issue of the *Texas Register* (28 TexReg 5013).

Filed with the Office of the Secretary of State on January 7, 2004.  
TRD-200400074



##### 1 TAC §255.8

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Commission on State Emergency Communications has been automatically withdrawn. The amended section as proposed appeared in the July 4, 2003 issue of the *Texas Register* (28 TexReg 5013).

Filed with the Office of the Secretary of State on January 7, 2004.  
TRD-200400075



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

#### CHAPTER 72. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES

#### SUBCHAPTER H. MEMORANDUM OF UNDERSTANDING ON INDIVIDUAL TRANSITION PLANNING FOR STUDENTS RECEIVING SPECIAL EDUCATION SERVICES

##### 40 TAC §72.1001

The Texas Department of Human Services has withdrawn from consideration the proposed amendments to §72.1001 which appeared in the July 26, 2003, issue of the *Texas Register* (28 TexReg 5841).

Filed with the Office of the Secretary of State on January 9, 2004.  
TRD-200400162

Paul Leche  
General Counsel, Legal Services  
Texas Department of Human Services  
Effective date: January 9, 2004  
For further information, please call: (512) 438-3734



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 1. GENERAL PROCEDURES SUBCHAPTER B. COLLECTION OF DEBTS

##### 4 TAC §1.56

The Texas Department of Agriculture (the department) adopts new §1.56, concerning waiver of fees charged to persons obtaining licenses or services from the department, without changes to the proposal published in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10007). New §1.56 is adopted to set forth the circumstances for which a fee waiver is deemed appropriate. The new section is also adopted to provide for the fair and equitable treatment of those persons who, without a waiver, would otherwise be required to pay additional fees due to extraordinary circumstances or events generally beyond their control, to avoid payment by the agency of the unnecessary administrative overhead and fee processing costs associated with interagency licensing transactions, and to allow for the promotion of legitimate educational opportunities and programs through waiver of otherwise necessary governmental fees. The new section includes definitions of terms used in the section, notice requirements, a statement of circumstances under which a fee will be waived, procedure to request a waiver of a fee, deadline for filing of a request to waive a fee, procedures for the department's approval of a request to waive a fee, circumstances for granting waivers, and provisions for the delegation by an assistant commission of duties or privileges established by the section.

No comments were received on the proposal.

The new section is adopted under the Texas Agriculture Code (the code), §12.034, which provides the department with the authority to adopt rules which provide for the waiver of licensing and inspection fees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2004.

TRD-200400123

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: January 28, 2004

Proposal publication date: November 14, 2003

For further information, please call: (512) 463-4075

### CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

#### SUBCHAPTER E. CREATION OF ERADICATION ZONES

##### 4 TAC §3.118

The Texas Department of Agriculture (the department) adopts new §3.118, concerning the creation of a nonstatutory boll weevil eradication zone for the Texas Panhandle, with changes to the proposal published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10588). The new section is adopted to designate a new nonstatutory boll weevil eradication zone consisting of the counties in the Texas Panhandle which are not included in another established boll weevil eradication zone, in order to allow cotton producers in the proposed area an opportunity to establish a manageable, efficient eradication program that meets the local needs of producers. In addition, the creation of a Panhandle zone will provide the potential for the entire panhandle to be under active eradication. New §3.118 designates the Panhandle Boll Weevil Eradication Zone consisting of all of Carson, Dallam, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Roberts and Sherman counties. The word "counties" has been added to the end of the listing of areas to clarify that those areas represent counties. A grower referendum will be conducted to determine whether or not a boll weevil eradication program and assessment will be approved in the area designated as the Panhandle zone.

No comments were received on the proposal.

The new section is adopted under the Texas Agriculture Code, §74.120, which provides the commissioner of agriculture with the authority to adopt rules to carry out the purposes of Chapter 74; and §74.1042, which provides the commissioner of agriculture with the authority to designate by rule an area of the state as a boll weevil eradication zone.

##### §3.118 Panhandle Boll Weevil Eradication Zone.

The Panhandle Boll Weevil Eradication Zone shall consist of the following area: all of Carson, Dallam, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Roberts and Sherman counties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 6, 2004.

TRD-200400037

Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Effective date: January 26, 2004  
Proposal publication date: November 28, 2003  
For further information, please call: (512) 463-4075

## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 62. CAREER COUNSELING SERVICES

The Texas Department of Licensing and Regulation ("Department") adopts amendments to existing rules at 16 Texas Administrative Code, §§62.1, 62.10, 62.40, and 62.90 and the repeal of §62.91 regarding the career counseling services program as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10856), without changes and will not be republished.

The amendments are made to give effect to statutory changes made by the 78th Legislature by changing the word "commissioner" to "executive director" and updating statutory references. Section 62.40 is amended to clarify that in the event of bond cancellation, a certificate of authority holder must continue to meet the §62.40 security requirements. The repeal removes §62.91 regarding sanctions because the procedures for an administrative hearing are defined in the Government Code and in other rules regarding department procedures.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. No comments were received.

##### 16 TAC §§62.1, 62.10, 62.40, 62.90

The amendments are adopted under Texas Occupations Code, Chapters 51, 53 and 2502, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 53, and 2502. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2004.

TRD-200400182  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Effective date: February 1, 2004  
Proposal publication date: December 5, 2003  
For further information, please call: (512) 463-7348

##### 16 TAC §62.91

The repeal is adopted under Texas Occupations Code, Chapters 51, 53 and 2502, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51, 53, and 2502. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2004.

TRD-200400183  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Effective date: February 1, 2004  
Proposal publication date: December 5, 2003  
For further information, please call: (512) 463-7348

#### CHAPTER 63. PERSONNEL EMPLOYMENT SERVICES

The Texas Department of Licensing and Regulation ("Department") adopts the repeal of 16 Texas Administrative Code, §§63.60 and §63.91 and amendments to existing §§63.1, 63.10, 63.21, 63.40, and 63.90, regarding the personnel employment services program as published in the November 21, 2003, issue of the *Texas Register* (28 TexReg 10366), without changes and will not be republished.

The repeal removes §63.60, concerning renewal notices because the Department in administering all Department-issued licenses, provides certificate of authority holders at least 60 days notice prior to expiration and §63.91, regarding sanctions because the procedures for an administrative hearing are defined in the Government Code and in other rules regarding department procedures. Section 63.40 is amended to clarify that in the event of bond cancellation, a certificate of authority holder must continue to meet the §63.40 security requirements. The amendments are made to give effect to statutory changes made by the 78th Legislature by changing the word "commissioner" to "executive director" and updating statutory references.

The Department drafted and distributed the proposal to persons internal and external to the agency. No comments were received.

##### 16 TAC §§63.1, 63.10, 63.21, 63.40, 63.90

The amendments are adopted under Texas Occupations Code, Chapters 51, 53 and 2501, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 53, and 2501. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2004.

TRD-200400178

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: February 1, 2004

Proposal publication date: November 21, 2003

For further information, please call: (512) 463-7348



### **16 TAC §63.60, §63.91**

The repeals are adopted under Texas Occupations Code, Chapters 51, 53, and 2501 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by these repeals are those set forth in Texas Occupations Code, Chapters 51, 53, and 2501. No other statutes, articles, or codes are affected by the repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2004.

TRD-200400179

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: February 1, 2004

Proposal publication date: November 21, 2003

For further information, please call: (512) 463-7348



## **CHAPTER 80. LICENSED COURT INTERPRETERS**

The Texas Department of Licensing and Regulation ("Department") adopts the repeal of 16 Texas Administrative Code, §80.24 and amendments to existing rules, §§80.10, 80.22, and 80.90 regarding the licensed court interpreters program as published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10614), without changes and will not be republished.

The repeal removes §80.24 concerning waiver of examination requirements because the time period for applying for a waiver of the examination, as established in House Bill 2735, Section 5, 77th Legislative Session, has expired.

The amendments to §80.10 remove definitions that are not needed because Senate Bill 279 of the 78th Legislature removed references to the word "commissioner." The amendments to §80.22 remove a reference to §80.24, which is proposed for repeal. The amendments to §80.90 remove unnecessary language from a reference to Chapter 60 of the Department's rules.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. No comments were received.

### **16 TAC §§80.10, 80.22, 80.90**

The amendments are adopted under Texas Government Code, Chapter 57 and Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Government Code, Chapter 57 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2004.

TRD-200400180

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: February 1, 2004

Proposal publication date: November 28, 2003

For further information, please call: (512) 463-7348



### **16 TAC §80.24**

The repeal is adopted under Texas Government Code, Chapter 57 and Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Government Code, Chapter 57 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2004.

TRD-200400181

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: February 1, 2004

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For further information, please call: (512) 463-7348



## **TITLE 19. EDUCATION**

### **PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION**



## CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

### SUBCHAPTER N. CERTIFICATE ISSUANCE PROCEDURES

#### 19 TAC §230.436

The State Board for Educator Certification (SBEC) adopts an amendment to 19 TAC §230.436, relating to the agency's schedule of fees for certification services. Section 230.436 was published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7559).

The adopted amendment to §230.436 will add new paragraph (10) relating to the fee for national criminal history background checks for all first time applicants.

The State Board for Educator Certification received no comments regarding the proposed amendment. Therefore §230.436 is being adopted without change.

The amendment is adopted under the statutory authority of Texas Education Code (TEC), §§21.041(b)(4), 21.041(c), 21.048 and 22.082.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 9, 2004.

TRD-200400164

Ron Kettler, Ph.D.

Interim Executive Director

State Board for Educator Certification

Effective date: January 29, 2004

Proposal publication date: September 5, 2003

For further information, please call: (512) 238-3280



## TITLE 22. EXAMINING BOARDS

### PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

#### CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

##### SUBCHAPTER A. THE BOARD

#### 22 TAC §661.6

The Texas Board of Professional Land Surveying (TBPLS) adopts the repeal of §661.6 concerning Bonds, without changes to the proposed repeal as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9687) and will not be republished. The section is deleted as the bond called for in this rule is no longer required due to legislation passed by the 78th Legislature, House Bill 2376.

The repeal of this section is needed in order to comply with legislation.

No comments were received regarding the repeal of this section.

Section 661.6 is repealed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt

and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2004.

TRD-200400077

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Effective date: January 27, 2004

Proposal publication date: November 7, 2003

For further information, please call: (512) 452-9427



#### 22 TAC §661.8

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.8 concerning Standing Committees, without changes to the proposed text as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9687) and will not be republished. The section changes language from "his" to "his/her" in order to conform with other rules and changes the definition of "quorum" in regards to the Registered Professional Land Surveyors Committee due to changes made by Sunset Legislation limiting the number of the Registered Professional Land Surveyors on the board.

The amendment clarifies language regarding to gender in §661.8(1) in order to conform with other Rules and changes the definition of "quorum" in §661.8(2) in order to comply with Sunset Legislation. These changes are needed in order to make this Rule apply to both genders and in order to comply with legislation.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2004.

TRD-200400078

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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Proposal publication date: November 7, 2003

For further information, please call: (512) 452-9427



##### SUBCHAPTER B. MEETINGS

#### 22 TAC §661.23

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.23 concerning Notice of Meetings, without changes to the proposed text as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9688) and will not be republished. The section changes language from "his" to "his/her" in order to conform with other rules.

The amendment clarifies language regarding to gender in §661.23 in order to conform with other Rules. These changes are needed in order to make this Rule apply to both genders.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2004.

TRD-200400079

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## SUBCHAPTER C. DEFINITIONS OF TERMS

### 22 TAC §661.33

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.33 concerning Easements and Construction Estimates, without changes to the proposed text as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9688) and will not be republished. The section corrects the legal cite for The Act which was changed due to re-codification.

The amendment corrects the legal cite in §661.33(c). This change is needed in order to correctly cite the location of The Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200400080

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

### 22 TAC §661.41

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.41, concerning Applications, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9689) and will not be republished.

The amendment changes the language from "his" to "his/her" in order to conform with other rules, adds language regarding degree requirements, adds language regarding translation of documents into English, and adds language regarding minimum proficiency in the English language. In addition, this amendment will delete language requiring applications to be notarized in order to conform with Sunset legislation.

The amendment clarifies language regarding gender in §661.41(b) and (c) in order to conform with other rules, adds language regarding degree requirements in §661.41(g) and (h) in order to clarify recognized degrees, adds language regarding foreign language translations and proficiency in the English language in §661.41(i) and (j) in order to make certain that applications, transcripts and other documentation is translated into English and that applicants are proficient in the English language, and deletes previously numbered §661.41(e) requiring applications to be notarized. This deletion necessitates the change in lettering for following subsections. These changes are needed in order to make this rule apply to both genders, in order to clarify degree requirements, in order to make certain that applications and documentation are correctly translated into English and that applicants are proficient in English, and in order to conform with Sunset legislation by deleting the section requiring notarization of applications.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2004.

TRD-200400081

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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Proposal publication date: November 7, 2003

For further information, please call: (512) 452-9427

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## 22 TAC §661.42

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.42, concerning Fees, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9690) and will not be republished.

The amendment deletes obsolete language and changes fees charged by TBPLS to clarify and accurately reflect charges for various information.

The amendment changes language regarding fees charged by TBPLS in §661.42(e)(1)(C), (E) and (F) in order to accurately reflect the actual fees charged by the agency and deletes obsolete language in §661.42(e) in order to correct legal citations. These changes are needed in order to make this rule accurately reflect fees charged by the agency and in order to correct legal citations.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2004.

TRD-200400082

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Effective date: January 27, 2004

Proposal publication date: November 7, 2003

For further information, please call: (512) 452-9427

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## 22 TAC §661.44

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.44, concerning Rejections, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9691) and will not be republished.

The amendment corrects the legal cite relating to hearings which was changed due to re-codification.

The amendment corrects the legal cite in §661.44. This change is needed in order to correctly cite the location of The Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2004.

TRD-200400083

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Effective date: January 27, 2004

Proposal publication date: November 7, 2003

For further information, please call: (512) 452-9427

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## 22 TAC §661.45

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.45, concerning Examinations, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9691) and will not be republished.

The amendment changes language from "his" to "his/her" in order to conform with other rules, corrects the legal cite for The Act which was changed due to re-codification, and changes language regarding the types of calculators allowed during an examination.

The amendment clarifies language regarding to gender in §661.45(a), changes language regarding the types of calculators allowed during an examination in §661.45(b), and corrects the legal cite in §661.4(f)(1). These changes are needed in order to make this rule apply to both genders, in order to clarify the types of calculators allowed to be used during examinations and in order to correctly cite the location of The Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200400084

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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Proposal publication date: November 7, 2003

For further information, please call: (512) 452-9427

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## 22 TAC §661.47

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.47, concerning Reciprocal Registration, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9692) and will not be republished.

The amendment changes language to correct the legal cite for The Act which was changed due to re-codification.

The amendment corrects the legal cites in §661.47(a) and (c). This change is needed in order to correctly cite the location of The Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2004.

TRD-200400085

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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Proposal publication date: November 7, 2003

For further information, please call: (512) 452-9427



## 22 TAC §661.50

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.50, concerning Surveyor Intern (SI) Experience Requirements, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9693) and will not be republished.

The amendment changes language from "he or she" to "he/she" in order to conform with other rules and corrects punctuation.

The amendment corrects punctuation in §661.50(3) and changes the language from "he or she" to "he/she" in §661.50(4) in order to conform with other rules. These changes are needed in order to correct the punctuation in this rule and in order to make this rule conform with gender references in other rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2004.

TRD-200400086

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Effective date: January 27, 2004

Proposal publication date: November 7, 2003

For further information, please call: (512) 452-9427



## SUBCHAPTER E. CONTESTED CASES

### 22 TAC §661.60

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.60, concerning Responsibility to the Board, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9694) and will not be republished.

The amendment adds language regarding complaint investigations.

The amendment adds language to §661.60(c) regarding investigations and the registrant/licensee/SIT's responsibility to the board regarding the same. These changes are needed in order to clarify the responsibility of the registrant/licensee/SIT to the board when investigating a complaint.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2004.

TRD-200400087

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Effective date: January 27, 2004

Proposal publication date: November 7, 2003

For further information, please call: (512) 452-9427



### 22 TAC §661.63

The Texas Board of Professional Land Surveying (TBPLS) adopts the repeal of §661.63 concerning Complaints Officer, without changes to the proposed repeal as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9696) and will not be republished. The section is deleted in order to conform to recently passed Sunset Legislation.

The repeal of this section is needed in order to comply with legislation.

No comments were received regarding the repeal of this section.

Section 661.63 is repealed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2004.

TRD-200400088

Sandy Smith  
Executive Director  
Texas Board of Professional Land Surveying  
Effective date: January 27, 2004  
Proposal publication date: November 7, 2003  
For further information, please call: (512) 452-9427



## 22 TAC §661.73

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.73 concerning Conduct of Hearings, without changes to the proposed text as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9697) and will not be republished. The section corrects the legal citations which changed due to re-codification.

The amendment corrects the legal cite in §661.73. This change is needed in order to correct legal citations which changed as a result of recodification.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2004.

TRD-200400089  
Sandy Smith  
Executive Director  
Texas Board of Professional Land Surveying  
Effective date: January 27, 2004  
Proposal publication date: November 7, 2003  
For further information, please call: (512) 452-9427



## 22 TAC §661.78

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.78 concerning Rules of Evidence, without changes to the proposed text as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9697) and will not be republished. The section changes language from "men" to "persons" in order to conform with other rules.

The amendment clarifies language regarding to gender in §661.78 in order to conform with other Rules. These changes are needed in order to make this Rule apply to both genders.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2004.

TRD-200400090  
Sandy Smith  
Executive Director  
Texas Board of Professional Land Surveying  
Effective date: January 27, 2004  
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For further information, please call: (512) 452-9427



## 22 TAC §661.79

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.79 concerning Documentary Evidence and Official Notice, without changes to the proposed text as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9698) and will not be republished. The section changes language from "his or her" to "his/her" in order to conform with other rules.

The amendment clarifies language regarding to gender in §661.79(a) in order to conform with other Rules. These changes are needed in order to make this Rule apply to both genders.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2004.

TRD-200400091  
Sandy Smith  
Executive Director  
Texas Board of Professional Land Surveying  
Effective date: January 27, 2004  
Proposal publication date: November 7, 2003  
For further information, please call: (512) 452-9427



## 22 TAC §661.83

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.83, concerning Depositions, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9698) and will not be republished.

The amendment corrects legal citations which changed due to re-codification.

The amendment corrects the legal cite in §661.83. This change is needed in order to correct legal citations.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## 22 TAC §661.86

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.86, concerning Final Decisions and Orders, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9699) and will not be republished.

The amendment changes language from "his" to "his/her" in order to conform with other rules.

The amendment clarifies language regarding to gender in §661.86 in order to conform with other rules. These changes are needed in order to make this rule apply to both genders.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## 22 TAC §661.88

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.88, concerning Motion for Rehearing, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9699) and will not be republished.

The amendment changes language from "his" to "his/her" in order to conform with other rules.

The amendment clarifies language regarding to gender in §661.88 in order to conform with other rules. These changes are needed in order to make this rule apply to both genders.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## 22 TAC §661.93

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.93, concerning Appeals, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9700) and will not be republished.

The amendment corrects legal citations which changed due to re-codification.

The amendment corrects the legal cite in §661.93. This change is needed in order to correct legal citations.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT SUBCHAPTER A. ETHICAL STANDARDS

### 22 TAC §663.3

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.3 concerning Offer to Perform Services, without changes to the proposed text as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9700) and will not be republished. The section changes language from "his" to "his/her" and from "he" to "he/she" in order to conform with other rules.

The amendment clarifies language regarding to gender in §663.3(1), (2) and (3) in order to conform with other Rules. These changes are needed in order to make this Rule apply to both genders.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## 22 TAC §663.4

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.4 concerning Conflict of Interest, without changes to the proposed text as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9701) and will not be republished. The section changes language from "his" to "his/her" in order to conform with other rules.

The amendment clarifies language regarding to gender in §663.4(5) and (6), in order to conform with other Rules. These changes are needed in order to make this Rule apply to both genders.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## 22 TAC §663.6

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.6, concerning Unauthorized Practice, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9701) and will not be republished.

The amendment changes language from "he" to "he/she" in order to conform with other rules and will clarify language.

The amendment clarifies language regarding gender in §663.6(1) and (2), in order to conform with other rules, and will clarify language in §663.6(2). These changes are needed in order to make this rule apply to both genders and to clarify language.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

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For further information, please call: (512) 452-9427



## 22 TAC §663.7

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.7, concerning Maintenance of Standards, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9702) and will not be republished.

The amendment changes language from "he" to "he/she" in order to conform with other rules.

The amendment clarifies language regarding gender in §663.7(2), in order to conform with other rules. These changes are needed in order to make this rule apply to both genders.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt

and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## 22 TAC §663.8

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.8, concerning Adherence to Statutes and Codes, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9702) and will not be republished.

The amendment changes language from "his" to "his/her" and from "him" to "him/her" in order to conform with other rules.

The amendment clarifies language regarding gender in §663.8(3) and (4), in order to conform with other rules. These changes are needed in order to make this rule apply to both genders.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## 22 TAC §663.9

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.9, concerning Professional Conduct, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9703) and will not be republished.

The amendment changes language from "his" to "his/her" in order to conform with other rules.

The amendment clarifies language regarding to gender in §663.9(b), in order to conform with other rules. These changes are needed in order to make this rule apply to both genders.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director

Texas Board of Professional Land Surveying

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## 22 TAC §663.11

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.11, concerning Certification and Monumentation of Surveys, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9704) and will not be republished.

The amendment changes language from "he" to "he/she" in order to conform with other rules and changes the legal citation for The Act in order to conform with re-codification.

The amendment changes the legal citation for The Act in §663.11 and clarifies language regarding gender in §663.11, in order to conform with other rules. These changes are needed in order to make this rule apply to both genders and to correctly cite the location of The Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director

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For further information, please call: (512) 452-9427





## 22 TAC §663.12

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.12, concerning Texas Guaranteed Student Loan Corporation Defaulters, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9704) and will not be republished.

The amendment changes the legal citations in order to conform with re-codification.

The amendment changes the legal citations in §663.12(b). These changes are needed in order to correct legal citations.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

### 22 TAC §663.17

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.17 concerning Monumentation, without changes to the proposed text as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9705) and will not be republished. The section changes legal citations in order to conform with recodification.

The amendment changes the legal citations in §663.17(b). These changes are needed in order to correct legal citations which changed as a result of recodification.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## 22 TAC §663.20

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.20 concerning Criminal Convictions, without changes to the proposed text as published in the September 26, 2003 issue of the *Texas Register* (28 TexReg 8286) and will not be republished. The section adds language relating to the procedures to be taken against a Registered Professional Land Surveyor, a Licensed State Land Surveyor or an applicant who is found to have been convicted of a felony, community supervision revocation, revocation of parole or revocation of mandatory supervision. In addition, this section changes legal citations and adds language clarifying the adjudication of guilt, the imposition of deferred adjudication and changes language from "incarceration" to "incarceration or jailed".

The amendment changes the legal citations in §663.20(a) and (d)(5) and clarifies language in §663.20(f) and (g) regarding incarceration. The amendment adds language in §663.20(h) relating to the adjudication of guilt. These changes are needed in order to correct legal citations which changed as a result of recodification, clarifies language regarding incarceration and adds language regarding the adjudication of guilt.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Effective date: January 27, 2004

Proposal publication date: September 26, 2003

For further information, please call: (512) 452-9427



## CHAPTER 664. CONTINUING EDUCATION

### 22 TAC §664.3

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §664.3 concerning Numerical Requirements for Continuing Education, without changes to the proposed text as published in the November 7, 2003 issue of

the *Texas Register* (28 TexReg 9706) and will not be republished. The section deletes obsolete language and corrects punctuation.

The amendment deletes obsolete language in §664.3 and corrects punctuation in §664.3. These changes are needed in order to correctly reflect the intent of the board and to update the section.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2004.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## 22 TAC §664.11

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §664.11 concerning Failure to Complete Required Continuing Education, without changes to the proposed text as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9706) and will not be republished. The section changes language from "his or her" to "his/her" in order to conform with other rules.

The amendment clarifies language regarding to gender in §664.11(c) in order to conform with other Rules. These changes are needed in order to make this Rule apply to both genders.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## CHAPTER 665. EXAMINATION ADVISORY COMMITTEE

### 22 TAC §§665.1 - 665.9

The Texas Board of Professional Land Surveying (TBPLS) adopts a new §665.1-665.9 concerning Examination Advisory Committees, without changes to the proposed text as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9707) and will not be republished. This section establishes requirements and operating procedures for examination committees. Legislation enacted in the 78th Legislative Session established these committees.

The new rule adds language to address the size, qualifications, appointment procedures, terms of office and training of committee members and establishes the operating procedures for the committees. This new rule is needed in order to comply with recent legislation.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 34. STATE FIRE MARSHAL SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

### 28 TAC §§34.808, 34.809, 34.811, 34.813, 34.814, 34.826

The Commissioner of Insurance adopts amendments to §§34.808, 34.809, 34.811, 34.813, 34.814 and 34.826, concerning the storage and sale of fireworks. Section 34.814 is adopted with changes to the text as published in the October 31, 2003, issue of the *Texas Register* (28 TexReg 9401) due to text that was omitted in the graphic in the proposal. Sections 34.808, 34.809, 34.811, 34.813, and 34.826 are adopted without changes and will not be republished.

The amendments are necessary to implement legislation enacted by the 78th Legislature in Senate Bill (SB) 693. SB 693 amends Chapter 2154, Occupations Code, by incorporating

National Fire Protection Association (NFPA) standards that set forth standards and procedures to be applied to the use of flame effects and pyrotechnics. These national standards mandate safeguards including requiring complete operational fire-sprinkler systems or personnel to implement standby fire watch, requiring the promoters of the display to provide the local authority with jurisdiction a copy of the display plan; requiring the promoter to notify the display audience of the sprinkler alarm system, that pyrotechnics or flame effects will be used, and where the fire exits are located. Additionally, the NFPA standards require that at least one pyrotechnic special effects licensee and one flame effects operator licensee be present on-site for the duration of the event to ensure compliance with the standards. With the new requirement to use licensed flame effects operators, who must pass a written flame effects examination with at least a grade of 70% to be licensed, displays will be performed by individuals with a greater knowledge in the use of flame effects.

The amendments to §§34.808, 34.809, 34.811, 34.813, 34.814 and 34.826 incorporate NFPA 160 and 1126 Standards for Use of Pyrotechnics Before a Proximate Audience and Standards for Flame Effects Before an Audience, respectively.

The amendment to §34.808 adds the definition of flame effects operator to the section. The amendment to §34.809 requires that a flame effects operator be licensed by the state fire marshal. The title and content of §34.811 are amended to add flame effects operator to the list of license applicants who are required to take a written examination and any other tests or demonstrations deemed necessary by the state fire marshal. The amendment to §34.813 states that when an application for a permit to use flame effects or pyrotechnics is required by §2154.253, Occupations Code, the application must be on a form provided by the state fire marshal and include the specified information required by NFPA 160 and 1126. The amendment to §34.814 sets forth the fees associated with a flame effects operator license including initial fee, renewal fee, initial examination fee and re-examination fee. This section also includes fees associated with expired flame effects operator licenses. The amendments to the title of §34.826 clarify that the section addresses pyrotechnic displays and includes flame effects. The amendment to §34.826(b) contains grammatical changes. New §34.826(h) sets forth criteria for preparing and conducting flame effects.

No comments were received.

The sections are adopted pursuant to the Occupations Code §§2154.052, 2154.156, 2154.253 and the Insurance Code §36.001. Occupations Code §2154.052 allows the commissioner to adopt and the fire marshal to administer rules that the commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks, and the commissioner may use standards published by a nationally recognized standards-making organization. Section 2154.156 requires an individual be licensed as a flame effects operator if he assembles, conducts, or supervises flame effects under §2154.253. Section 2154.253 mandates compliance with NFPA safety standards for the use of flame effects or pyrotechnics for entertainment, exhibition, demonstration, or simulation before an assembly of 50 people or more, except for public safety demonstrations. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the

Texas Department of Insurance under the Insurance Code and other laws of this state.

*§34.814. Fees.*

(a) Fees required by the Occupations Code Chapter 2154 and this subchapter, shall be paid by cash, money order, or check. Money orders and checks shall be made payable to the Texas Department of Insurance. Except for overpayments resulting from mistakes of law or fact, or credits for unused retail fireworks permits, all fees are nonrefundable and non-transferable.

(b) Fees shall be paid at the Office of the State Fire Marshal in Austin, or mailed to an address specified by the state fire marshal. Retail permits may also be obtained through participating licensed firms. See §34.815 of this title (relating to Retail Permits).

(c) Fees shall be as follows:

(1) manufacturer license:

(A) initial fee \$1,000;

(B) renewal fee (prior to expiration) \$1,000;

(2) distributor license:

(A) initial fee \$1,500;

(B) renewal fee (prior to expiration) \$1,500;

(3) jobber license:

(A) initial fee \$1,000;

(B) renewal fee (prior to expiration) \$1,000;

(4) pyrotechnic special effects operator license:

(A) initial fee \$25;

(B) renewal fee (prior to expiration) \$25;

(C) initial examination fee \$20;

(D) reexamination fee \$20;

(5) pyrotechnic operator license:

(A) initial fee \$25;

(B) renewal fee (prior to expiration) \$25;

(C) initial examination fee \$20;

(D) reexamination fee \$20;

(6) multiple public display permit:

(A) initial fee \$400;

(B) renewal fee (prior to expiration) \$400;

(7) retail permit \$20;

(8) single public display permit \$50;

(9) agricultural, industrial, and wildlife control permits \$10; and

(10) flame effects operator:

(A) initial fee \$25;

(B) renewal fee (prior to expiration) \$25;

(C) initial examination fee \$20;

(D) reexamination fee \$20.

(d) A renewal application for a license deposited with the United States Postal Service is deemed to be timely filed when its

envelope bears a legible postmark on or before the expiration date of the license being renewed. Any renewal application postmarked after the expiration date must be accompanied by the renewal fee and the appropriate late fee.

(e) Holders of licenses which have been expired for less than two years cannot be issued new licenses.

(f) Late fees are as follows.

Figure: 28 TAC §34.814(f)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327



## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 16. COASTAL COORDINATION COUNCIL**

#### **CHAPTER 506. COUNCIL PROCEDURES FOR FEDERAL CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND PRIORITIES**

##### **31 TAC §§506.11, 506.12, 506.20, 506.28**

The Texas Coastal Coordination Council (Council) adopts amendments to §506.11(18), relating to Definitions; and §506.28(b), relating to General Consistency Agreements and Interagency Coordination Groups for Federal Development Projects.

The Council also adopts amendments to §506.12, relating to Federal Agency Actions, Federal Agency Activities and Development Projects, and Outer Continental Shelf Plans Subject to the Coastal Management Program; and §506.20, relating to Consistency Determinations for Federal Agency Activities and Development Projects. Specifically, the Council deletes §506.12(a)(1)(F), rennumbers §506.12(a)(1)(G) as §506.12(a)(1)(F), and deletes §506.12(a)(1)(G)(iii), §506.12(b)(1)(A), and §506.20(d).

The rule amendments are adopted without changes to the text, as published in the October 17, 2003, issue of the *Texas Register* (28 TexReg 9060). The text will not be republished.

The purposes of the amendments to §506.11(18) are to change the term "interagency coordination group" to "interagency coordination team," and to describe, rather than dictate, who typically serves on an interagency coordination team and its purpose. The reasoned justification for these changes is that it makes the term consistent with common usage by the Council and the U.S.

Army Corps of Engineers (USACE), which have personnel who participate in and coordinate interagency coordination teams for federal agency activities and development projects. Also, the membership of each team is determined by the sponsoring federal agency, typically the USACE.

The purpose of the amendment of §506.28(b) is to clarify the process by which the Council will issue consistency agreements for federal agency activities and development projects for which the federal agency has employed the use of an interagency coordination team (ICT). The reasoned justification for the change is that §506.28(b) has been reworded for clarity and to better define procedures that are acceptable to the Council and to the USACE when an ICT is used for a project. The ICT process was originally created to assist the USACE in planning and designing projects so that all environmental concerns would be fully identified and addressed during planning. To encourage federal agencies to pursue this type of consensus-based process, the Council established a streamlined consistency review process for federal development projects at 31 TAC §506.28(b), wherein the Council members on the ICT could issue a consistency finding. This procedure is intended to fold the consistency review process into the overall project assessment and design process and to ensure that major federal projects are designed to be consistent with the CMP goals and policies.

Section 506.28(b) is amended to apply to federal agency activities as well as federal development projects. The reasoned justification is that federal agencies employ ICTs for both federal agency activities and federal development projects. By including federal agency activities under this section, the Council will no longer be in the position of determining whether a federal project is an activity or a development project, and the Council may employ the procedures in §506.28(b) for all federal projects where an ICT is used.

Additionally, the term "interagency coordination group" is changed to "interagency coordination team." The reasoned justification is that this change makes the term consistent with common usage by the Council and the USACE.

The §506.28(b) amendments also clarify that the "natural resource agencies" under 506.28(b)(2) include all the Council member agencies. The reasoned justification is that all Council member agencies should be allowed to serve on an ICT without the need to determine which would qualify as "natural resource agencies."

New §506.28(b)(5) has been added to clarify that public comment should be considered by the Council member agency representatives on the ICT. The federal agency's consistency determination is considered to be affirmed unless a majority of the Council member agency representatives on the ICT object to the federal agency's consistency determination within 15 days after the close of the public comment period. The reasoned justification for this change is to comply with the federal consistency procedural requirement that the Council allow for public comment. Also, the Council member agency representatives on the ICT are the best qualified to consider the public comment. In order to facilitate the coordination of the ICT Council member agencies' concurrence with the federal agency's consistency determination, the rule change assumes that the Council member agency representatives concur unless they explicitly object within the 15-day time period.

The purpose of the deletion of §506.12(a)(1)(F) and 506.12(b)(1)(A) is to remove the listing of the National

Marine Fisheries Service's (NMFS's) promulgation of fishery management measures for the Gulf of Mexico under 16 United States Code §1854 from the list of actions subject to Council consistency review. The reasoned justification for this change is to comply with National Oceanic and Atmospheric Administration (NOAA) directives. The Council listed this federal activity in a rulemaking effective August 27, 2000. However, NOAA has indicated that it would not approve the listing of federal fishery management measures as an activity subject to Council consistency review because it would require compliance with the Council's marine fishery management policies by only the NMFS. According to NOAA, the Council's policies concerning marine fishery management in 31 TAC §501.14(t) must apply to both state and federal activities, and the Council has not listed any corresponding state activity that would be subject to Council consistency review. The Council has also determined that, at this time, there is little benefit to the state in reviewing NMFS fishery management measures. Therefore, the Council has determined that it should delete §506.12(a)(1)(F). The deletion of §506.12(a)(1)(F) necessitates the renumbering of current subsection (1)(G) as subsection (1)(F).

The purpose of the deletion of §506.20(d) is to remove the procedural requirement that the Texas Parks and Wildlife Department perform consistency reviews of fishery management measures for the Gulf of Mexico promulgated by the National Marine Fisheries Service for the Council. The reasoned justification for this change is to make it consistent with the deletion of §506.12(a)(1)(F), which removes the listing of the NMFS's promulgation of fishery management measures from the list of actions subject to Council consistency review.

The purpose of the repeal of §506.12(a)(1)(G)(iii) is to remove from the list of actions subject to Council consistency review the natural resource restoration or mitigation plans developed as a result of enforcement actions for violations of §10 of the Rivers and Harbors Act or §404 of the Clean Water Act. The reasoned justification is that NOAA would not approve the listing of these enforcement restoration or mitigation plans at this time, without further coordination with the USACE and the United States Department of Justice. The Council has also found other ways to work with the USACE to address the concerns that gave rise to this listing.

No comments were received regarding the amendments to this rule.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed rulemaking as a "major environmental rule." Under the Government Code, a "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. A regulatory analysis is required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council. The proposed rulemaking will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state

or a sector of the state. The proposed rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, and is not adopted solely under the general powers of the Council.

These amendments are adopted under Texas Natural Resources Code, Chapter 33, §33.051, which authorizes the Council and the Texas General Land Office to perform the duties provided in Subchapter C; §33.052, which authorizes the commissioner to develop a continuing comprehensive CMP; §33.053, which sets out the elements of the CMP, including a description of the organizational structure for implementing and administering the CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.055, which requires the Council to hold public hearings, as deemed appropriate, to consider amendments to the CMP; and §33.206(d) which authorizes the Council to adopt procedural rules for the review of federal actions, activities and outer continental shelf plans that incorporate provisions of federal regulations governing those reviews.

Texas Natural Resources Code §§33.051, 33.052, 33.053, 33.054, 33.055, 33.204 and 33.206(d) are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2004.

TRD-200400124

Larry Soward

Chief Clerk, General Land Office

Coastal Coordination Council

Effective date: January 28, 2004

Proposal publication date: October 17, 2003

For further information, please call: (512) 305-9129

## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES**

#### **CHAPTER 12. SPECIAL NUTRITION PROGRAMS**

##### **SUBCHAPTER A. CHILD AND ADULT CARE FOOD PROGRAM (CACFP)**

##### **DIVISION 2. ELIGIBILITY OF CONTRACTORS AND FACILITIES**

###### **40 TAC §12.21**

The Texas Department of Human Services (DHS) adopts an amendment to §12.21 without changes to the proposed text published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10900).

Justification for the amendment is to remove the specific dollar amount of the threshold for the single audit requirements and to provide the reference for compliance to 7 Code of Federal Regulations (CFR) Part 3052. This amendment makes the rule consistent with corresponding audit rules in Chapter 12.

DHS received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Chapters 22 and 33, which authorizes DHS to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.0001-22.040 and §§33.001-33.027.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2004.

TRD-200400121

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Effective date: January 28, 2004

Proposal publication date: December 5, 2003

For further information, please call: (512) 438-3734



## PART 6. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING

### CHAPTER 183. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

#### SUBCHAPTER A. DEFINITIONS AND BOARD OPERATIONS

##### 40 TAC §183.9

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §183.9, without changes to the text as published in the November 7, 2003, *Texas Register* (28 TexReg 9789).

This amendment will add language regarding the definition of a court interpreter.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2004.

TRD-200400137

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Effective date: January 28, 2004

Proposal publication date: November 7, 2003

For further information, please call: (512) 407-3250



#### SUBCHAPTER G. CERTIFIED COURT INTERPRETERS

##### 40 TAC §183.701

The Texas Commission for the Deaf and Hard of Hearing adopts new §183.701, without changes to the text as published in the November 7, 2003, *Texas Register* (28 TexReg 9790).

This new rule will add language defining the scope of the court interpreter program.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2004.

TRD-200400125

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Effective date: January 28, 2004

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For further information, please call: (512) 407-3250



##### 40 TAC §183.706

The Texas Commission for the Deaf and Hard of Hearing adopts new §183.706, without changes to the text as published in the November 7, 2003, *Texas Register* (28 TexReg 9791).

This new rule will add language defining the examination requirements to become certified as a court interpreter.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2004.

TRD-200400126

David Myers  
Executive Director  
Texas Commission for the Deaf and Hard of Hearing  
Effective date: January 28, 2004  
Proposal publication date: November 7, 2003  
For further information, please call: (512) 407-3250



#### 40 TAC §183.707

The Texas Commission for the Deaf and Hard of Hearing adopts new §183.707, without changes to the text as published in the November 7, 2003, *Texas Register* (28 TexReg 9791).

This new rule will add language defining the training and requirements necessary to enable a person to take the court interpreter examination.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2004.

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David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

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For further information, please call: (512) 407-3250



#### 40 TAC §183.708

The Texas Commission for the Deaf and Hard of Hearing adopts new §183.708, without changes to the text as published in the November 7, 2003, *Texas Register* (28 TexReg 9792).

This new rule will add language defining the training and mentor requirements necessary to be approved by the Commission prior to the court interpreter examination.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2004.

TRD-200400128

David Myers  
Executive Director  
Texas Commission for the Deaf and Hard of Hearing  
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For further information, please call: (512) 407-3250



#### 40 TAC §183.709

The Texas Commission for the Deaf and Hard of Hearing adopts new §183.709, without changes to the text as published in the November 7, 2003, *Texas Register* (28 TexReg 9792).

This new rule will add language defining the requirements necessary to be approved by the Commission to renew a person's court interpreter certification.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

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For further information, please call: (512) 407-3250



#### 40 TAC §183.710

The Texas Commission for the Deaf and Hard of Hearing adopts new §183.710 with changes to clarify section (d). The rule was originally issued and posted in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9793).

This new rule will add language defining the responsibilities of a certified court interpreter.

No comments were received.

The new section is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this adopted new section.

§183.710. *Responsibilities of certified court interpreter--General.*

(a) A certified court interpreter must provide the following written notification to the court: "Certified by the Texas Commission for the Deaf and Hard of Hearing. Complaints about the services provided by this person may be presented to the Commission at P.O. Box 12904, Austin, Texas 78711." The notification shall also be included on all contracts and invoices for court interpreter services.

(b) A certified court interpreter shall present their court interpreter certification card upon the request of a court or an officer of the court.

(c) A certified court interpreter shall notify the Commission, in writing, within thirty (30) days of any change in the certified court interpreter's name, address, or telephone number.

(d) A Level III, IV or V certified interpreter, or RID certified CSC, IC/IT, RSC, MCSC interpreter who is not a certified court reporter who interprets in court shall inform the court.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

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For further information, please call: (512) 407-3250



#### 40 TAC §183.711

The Texas Commission for the Deaf and Hard of Hearing adopts new §183.711, without changes to the text as published in the November 7, 2003, *Texas Register* (28 TexReg 9793).

This new rule will add language defining the fees required to apply to become a certified court interpreter.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

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For further information, please call: (512) 407-3250



#### 40 TAC §183.712

The Texas Commission for the Deaf and Hard of Hearing adopts new §183.712, without changes to the text as published in the November 7, 2003, *Texas Register* (28 TexReg 9794).

This new rule will add language outlining authority of the agency to impose administrative sanctions on a person who interprets in a court and is not qualified to function as a court interpreter.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

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For further information, please call: (512) 407-3250



#### 40 TAC §183.713

The Texas Commission for the Deaf and Hard of Hearing adopts new §183.713, without changes to the text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9794).

The new rule will add language outlining process and actions that the agency may impose upon a person who interprets in a court and is not qualified to function as a court interpreter.

No comments were received regarding the new section.

The new section is adopted under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by the adopted new section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

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For further information, please call: (512) 407-3250



#### 40 TAC §183.714

The Texas Commission for the Deaf and Hard of Hearing adopts new §183.714, without changes to the text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9795).



The new rule will add language outlining disciplinary actions that the agency may enact upon a person who interprets in a court and is not qualified to function as a court interpreter.

No comments were received regarding the new section.

The new section is adopted under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by the adopted new section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

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For further information, please call: (512) 407-3250



#### 40 TAC §183.715

The Texas Commission for the Deaf and Hard of Hearing adopts new §183.715, without changes to the text as published in the November 7, 2003, *Texas Register* (28 TexReg 9796).

This rule will add language outlining disciplinary actions guidelines that the agency will utilize when a person interprets in a court and is not qualified to function as a court interpreter.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

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For further information, please call: (512) 407-3250



#### 40 TAC §183.716

The Texas Commission for the Deaf and Hard of Hearing adopts new §183.716, without changes to the text as published in the November 7, 2003, *Texas Register* (28 TexReg 9797).

This new rule will add language clarifying the continuing education requirements of a certified court interpreter.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2004.

TRD-200400136

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

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For further information, please call: (512) 407-3250



## PART 20. TEXAS WORKFORCE COMMISSION

### CHAPTER 809. CHILD CARE AND DEVELOPMENT

The Texas Workforce Commission (Commission) adopts the repeal of the following sections of Chapter 809, relating to Child Care and Development without changes to the proposal as published in the October 31, 2003, issue of the *Texas Register* (28 TexReg 9496):

Subchapter A, General Provisions, §809.1;

Subchapter B, General Management Requirements, §809.20;

Subchapter C, Requirements to Provide Child Care, §809.44 and §809.46;

Subchapter D, Self-Arranged Care; §809.61 and §809.62;

Subchapter E, Parent Rights and Responsibilities, §§809.72, 809.78 and 809.79;

Subchapter F, General Eligibility for Child Care, §809.92 and §809.93;

Subchapter G, Child Care for People Transitioning Off Public Assistance, §809.101;

Subchapter H, Children of Parents at Risk of Becoming Dependent on Public Assistance, §§809.121 - 809.123;

Subchapter K, Funds Management, §§809.225, 809.226 and 809.231;

Subchapter M, Appeal Procedure, §809.271;

Subchapter N, Corrective and Adverse Action, §809.283; and

Subchapter O, Child Care Train Our Teachers (TOT) Award, §§809.301 - 809.304, 809.311 - 811.314, 809.331, and 809.332.

The Commission adopts new rules for the following sections of Chapter 809 without changes to the proposed text as published

in the October 31, 2003, issue of the *Texas Register* (28 TexReg 9496):

Subchapter A, General Provisions, §809.1;

Subchapter D, Self-Arranged Care, §809.63;

Subchapter E, Parent Rights and Responsibilities, §809.78 and §809.79;

Subchapter F, General Eligibility for Child Care, §809.92 and §809.93;

Subchapter H, Children of Parents at Risk of Becoming Dependent on Public Assistance, §809.123;

Subchapter K, Funds Management, §809.226 and §809.231; and

Subchapter M, Appeal Procedure, §809.271.

The Commission adopts new rules for the following sections of Chapter 809 with changes to the proposed text as published in the October 31, 2003, issue of the *Texas Register* (28 TexReg 9496):

Subchapter B, General Management, §809.20;

Subchapter C, Requirements to Provide Child Care, §809.44 and §809.46;

Subchapter D, Self-Arranged Care, §809.61 and §809.62;

Subchapter E, Parent Rights and Responsibilities, §809.72;

Subchapter G, Child Care for People Transitioning Off Public Assistance, §809.101;

Subchapter H, Children of Parents at Risk of Becoming Dependent on Public Assistance, §809.121 and §809.122;

Subchapter K, Funds Management, §809.225; and

Subchapter N, Corrective and Adverse Action, §809.283.

#### PART I. PURPOSE AND BACKGROUND

##### A. Purpose

##### B. Background

#### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

#### PART III. COORDINATION OF ACTIVITIES

#### PART IV. PUBLIC COMMENTS AND RESPONSES

#### PART I. PURPOSE AND BACKGROUND

##### A. Purpose

The purpose of the rule changes is, in part, to comply with federal and state statutory requirements. The rule changes also promote the efficient use of available funds providing affordable, safe and nurturing child care services to the maximum number of eligible families in order to enable them to achieve or maintain self-sufficiency. The Commission also removes certain obsolete rule provisions.

##### B. Background

The Commission adopts rule changes in order to comply with federal laws regarding the exclusion of certain federal educational loans and monetary allowances paid to certain children of Vietnam veterans from the income eligibility calculation. The Commission also adopts the rule changes in response to Senate

Bill 280 (SB 280) enacted by the 78th Legislature, Regular Session, which requires modifications in the parent notification period for terminating child care services. SB 280 also allows the Commission the option of discontinuing the Train Our Teacher (TOT) scholarship program. The Commission also makes technical amendments to reflect the name change from the Texas Department of Protective and Regulatory Services (TDPRS) to the Texas Department of Family and Protective Services (TDFPS) as required by House Bill 2292, enacted by the 78th Legislature, Regular Session.

The proposed rule changes also provide clarification and establish new statewide parameters for local policies involving minimum work-activity hours, reimbursements to providers, and the parent responsibility agreement.

#### PART II. EXPLANATION OF INDIVIDUAL RULE AMENDMENTS

##### §809.1. Short Title and Purpose.

The Commission repeals §809.1(c) relating to the effective date for the implementation of the child care rules adopted in February 1999. It includes the provision that "...until September 1, 1999, the Boards shall continue to comply with the rules in effect on January 1, 1999." It also provides that Boards have until December 1, 1999 to implement direct payments to providers for self-arranged child care. The purposes for which these specific rules were adopted have been served, and they are no longer relevant.

The Commission also adds a new §809.1(c) that provides clarification related to the repeal of Subchapter O, Child Care Train Our Teachers (TOT) Award. SB 280 amends §302.066(a) of the Labor Code, making it optional rather than mandatory for the Commission to continue awarding TOT scholarships. Both the 76th and 77th Legislatures appropriated funds specifically to support the TOT scholarship awards. The 78th Legislature, however, appropriated no funds specifically to support the continuation of the TOT scholarships in the 2004 - 2005 biennium. Furthermore, an evaluation of the first two years of the TOT program indicates that the scholarships are not achieving the results intended.

Section 809.1(c) stipulates that the Texas Workforce Commission will continue to administer and honor TOT scholarships awarded prior to July 1, 2003, under the rules in effect when the scholarship was awarded. The new rule also stipulates that repeal of the TOT award will not prohibit the Commission from enforcing the employment and reporting obligations required of TOT awardees.

##### §809.20. Leveraging Local Resources.

The Commission changes §802.20(a)(1) by adding subparagraph (B) in order to allow Boards to include certifications of eligible expenditures by private entities in their local match requirements. With the increase in the amount of local match required in the state's General Appropriations Act for the 2004 - 2005 biennium, the ability to certify eligible expenditures by private entities would assist the Boards in securing additional local matching funds.

The federal regulations at 45 CFR, Part 98 §98.53 provide for the use of certified or transferred public funds and for the use of private funds, within certain limitations, to meet the state's matching funds requirements. This rule change allows Boards to certify child care expenditures by private entities provided that the expenditures do not expressly or effectively benefit a specific individual, organization, facility or institution.

#### §809.44. Provider General Liability Insurance Requirements.

The Commission adopts a new §809.44 in order to set limits on Board policies regarding liability insurance for child care providers. Prior to this change the Boards had flexibility in determining if general liability insurance would be required and the amount of the liability insurance required for child care providers with signed agreements to serve Commission subsidized children. The rule changes in §809.44 will align the liability insurance requirements for child care with the state requirements stipulated in Chapter 42 of the Human Resources Code.

State law (§42.049 of the Human Resource Code) requires only licensed child care centers to carry \$300,000 per occurrence in general liability insurance. If a center is unable to secure liability insurance or has exhausted the liability limits stipulated in its policy, state law permits the Texas Department of Family and Protective Services (TDFPS) to exempt the center from this requirement, and the center must notify parents that they do not carry liability insurance. Furthermore, state law does not require child care homes to carry liability insurance to be licensed or registered by TDFPS.

Many Boards, however, in their agreements with child care providers require liability insurance in excess of the \$300,000, require providers to list the contractor as the "additional insured" in the provider's policy, and do not allow an exemption from the liability insurance requirement as stipulated in the state standards. Most Boards also require liability insurance in their agreements with licensed and registered child care homes, even though these providers are not required by state law have general liability insurance.

It is the intent of the Commission that Boards not place additional requirements on child care providers that are not required by state law. State law requires liability insurance in the amount of \$300,000 per occurrence only for licensed child care centers. TDFPS is the agency responsible for regulating the child care industry and thereby enforces the licensing requirements for that industry.

Boards do not have the authority to regulate or license child care providers in any way, including requiring that providers maintain or obtain liability insurance. The Boards' role is to ensure that providers that are required to meet the state's licensing requirements are in good standing with TDFPS. Boards are responsible for ensuring that parent choice is the basic foundation upon which the services are delivered. To that end, Boards' contractors may inform parents of the state's licensing requirements so parents can make informed decisions when selecting a child care provider as part of the required consumer education.

Other than consumer education, the Commission intends that no funds be expended on regulatory activities relating to the licensing or monitoring of child care providers, as that is the express statutory authority of TDFPS and not an appropriate use of funds by a Board or a Board's contractor. Boards must ensure that they and their contractors do not create the appearance of regulating child care providers. The Boards should take steps to ensure that parents are not under the impression that child care providers with agreements are "approved" or otherwise "regulated" by the Boards or contractors, as this would be contrary to the statutory division of authority between the TDFPS and the Commission intended by the Legislature.

Information obtained from the National Child Care Information Center (NCCIC) reveals that 26 states do not require liability insurance for licensed child care centers. For the 24 states that do require liability insurance for licensed child care centers, the average amount required is \$300,000 per occurrence. Of the 50 states, 41 do not require liability insurance for licensed or registered child care homes. Six of those 41 states do require transportation insurance if a provider transports children in care.

Section 809.44(a) specifies that Boards may not require licensed child care centers to have insurance limits or requirements in excess of the state licensing standards.

Section 809.44(b) ensures that licensed child care centers that are required by TDFPS to have liability insurance, but are unable to obtain insurance or have exhausted their liability limits, must notify TDFPS, the parents and the Board that they do not have liability insurance. However, they must remain eligible to receive child care subsidies as long as they remain licensed by TDFPS.

Finally, §809.44(c) prohibits Boards from requiring liability insurance for licensed or registered child care homes that are not required by the state to have liability insurance.

#### §809.46. Assessing and Collecting Parent's Share of Cost Share.

The Commission changes §809.46(a) by removing the obsolete paragraph (4). Prior to September 3, 2001, the rules stated that parents or caretakers receiving TANF or SSI were exempt from the parent's share of cost. That exemption was amended effective September 3, 2001 to include only parents who are participating in TANF Choices employment services. The obsolete §809.46(a)(4) was part of the old rules intended to clarify that the parent's share of cost was not waived if the child was the only family member receiving TANF or SSI. This provision became obsolete in September 3, 2001 when the exemption for SSI recipients was repealed.

Repeal of §809.61, Qualifications to Provide Self-Arranged Care and §809.62, Reimbursement for Self-Arranged Care; Addition of §809.61, Qualifications to Provide Unregulated Relative Care, §809.62, Qualifications to Provide Regulated Self-Arranged Care, and §809.63, Reimbursement for Self-Arranged Child Care.

The Commission adopts rules to distinguish clearly between regulated self-arranged care and unregulated relative self-arranged care. The Commission makes this change in order to clearly specify that relative care is the only unregulated child care provided by the state. The Commission repeals the previous §809.61, Qualifications to Provide Self-Arranged Care. The Commission establishes a new §809.61, Qualifications to Provide Unregulated Relative Self-Arranged Care. The provisions relating to regulated self-arranged care are included in a new §809.62, Qualifications to Provide Regulated Self-Arranged Care. The previous §809.62, Reimbursement for Self-Arranged Care is now §809.63.

#### §809.72. General Parent Rights.

The Commission amends §809.72 to add paragraph (6) regarding the notification of termination of child care in order to comply with SB 280 enacted by the 78th Texas Legislature, Regular Session. Section 809.72(6) applies only to parents terminated from at-risk child care in order to make room for mandatory state priority groups. Section 809.72(5) requiring written notification

by the Board's contractor at least 15 days before the denial, delay, reduction, or termination of child care remains in effect for all other care.

The intent of SB 280 is to require a 30-day notification to parents whose child care is terminated, denied or reduced to make room for priority groups. The only exceptions provided by SB 280 are if the 30-day notice would interfere with the ability of the Board to comply with its duties regarding the number of children served or would require the expenditure of funds in excess of the amount allocated to the Board. Under these circumstances the notice may be provided on the earliest date on which it is practicable for the Board. SB 280 also requires that the written notification include information regarding other child care services for which the recipient may be eligible.

The Commission adds §809.72(5)(C) that allows the exceptions to the 30-day notification as stipulated by SB 280. The Commission also adds §809.72(6) to require that the written notification include information regarding other child care services for which the recipient may be eligible.

#### §809.78. Parent Responsibility Agreement.

The Commission changes §809.78(b)(1) in order to define more clearly how parents must show cooperation with the Office of the Attorney General (OAG), if necessary, to establish paternity and to enforce child support as required by the Parent Responsibility Agreement (PRA).

Commission staff contacted the Texas Department of Human Services (TDHS) to determine how that agency defines this section of the Personal Responsibility Agreement signed by TANF recipients. The rule change aligns child care rules with the TDHS definition regarding this section of the PRA.

The new language stipulates that the parent must show cooperation with the Office of the Attorney General on an ongoing basis by: providing information about and helping to locate the absent parent; helping to establish paternity; and appearing in court hearings or other meetings to establish child support.

The Commission also changes §809.78(b)(3) in order to correct the reference to the citation in the Education Code regarding exemption from school attendance as required by the PRA. The previous rule cites §21.003 of the Education Code; however, the correct citation is §25.086.

#### §809.79. Parent Responsibility Agreement, Sanctions and Exceptions.

The Commission changes §809.79 in order to strengthen the sanctions a Board may impose for non-compliance with the Parent Responsibility Agreement (PRA). The previous rule provided that Boards may impose a sanction of an additional parent co-pay of \$25 per month for every month of non-compliance with the PRA. Boards have voiced a concern that the additional \$25 per month is inconsequential to the parents and is insufficient as an incentive for compliance with the PRA.

The Commission addresses this concern by adopting §809.79(a)(2) to require the Boards to establish a sanction policy that includes the option of terminating the family's child care for non-compliance with the PRA.

#### §809.92. General Eligibility Requirements.

The Commission adopts §809.92(b) by changing the word "parents" in the previous rule to "family" in order to remain consistent with the definition of "family" in §809.91(2).

The Commission also changes §809.92(b)(1) in order to state specifically that the Boards determine income eligibility limits. The Boards, however, shall not set income limits higher than 85 percent of the state median income (SMI) as required by 45 CFR 98.20(a)(2). This change makes the rules consistent with the Commission's intent and the CCDF State Plan. The Commission also makes changes to subsequent references to income limits in §809.121 and §809.122 regarding eligibility for children living at low incomes and children with disabilities to specifically stipulate that the Board sets income limits for these populations provided that the income limit shall not exceed 85 percent of SMI.

#### §809.93. Calculating Income.

The Commission changes §809.93(a)(8) to clarify that income from Temporary Assistance for Needy Families (TANF) includes payments for both single-parent families and for two-parent families as provided in Chapters 31 and 34 respectively of the Texas Human Resources Code.

The Commission also changes §809.93(b) by adding paragraph (2) in order to comply with Title 38 United States Code (USC) §1823(c) which states that federal income support for children of Vietnam veterans born with spina bifida and children of women of Vietnam veterans with certain other birth defects shall not be included in determining eligibility and co-payments for federally assisted programs.

The Commission changes §809.93(b) by adding paragraph (3) in order to comply with the Title 20 USC §1087uu that requires the disregard of federal student aid when determining eligibility for programs funded in whole or in part with federal funds. Specifically, the disregard covers federal work-study programs funded by the Economic Opportunity Program, any student financial aid provided by the Bureau of Indian Affairs, and federal student assistance provided by Higher Education Resources and Student Assistance. Other educational loans and grants from state and local sources will still be included in calculating income.

#### §809.101. Transitional Child Care.

The Commission changes §809.101(a) in order to define transitional child care as care provided to former TANF recipients who: were denied cash assistance and were working at the time their TANF benefits were denied; or have been denied cash assistance due to expiration of time limits within the last 30 days.

When a TANF recipient loses or is denied cash assistance, child care contractor staff uses DHS's SAVERR system to determine that the parent is eligible for transitional child care. There are some instances, however, when a parent may be eligible for transitional child care services but is not coded as transitional in the SAVERR system. It is the intent of the Commission that Boards request parents to provide proof that they are eligible for transitional child care and that the SAVERR system be used only to verify eligibility for parents coded as transitional in that system.

The Commission changes §809.101 to add subsection (b) that specifically gives Boards the authority to set higher income eligibility limits for transitional child care than their initial eligibility limits, provided the limit does not exceed 85 percent of SMI. The Commission makes this addition in order to clarify its intent and reinforce that provision in the CCDF State Plan.

The Commission redesignates §809.101(b) to (c) and modifies it to add a provision from Chapter 31 of the Texas Human Resources Code which stipulates that 18 months of transitional care be provided only to those Choices volunteers who are eligible for a child caretaker exemption.

The Commission redesignates §809.101(c) to (d) and changes it in order to limit transitional child care to four weeks for clients participating in a Choices activity and who are not employed when their TANF cash assistance expires. As a result of this change, the Commission also repeals subsection (d) relating to clients participating in a Choices activity when their TANF cash assistance expires.

#### §809.121. Children Living at Low Incomes and §809.122. Children with Disabilities

The Commission changes §809.121 and §809.122 by adding §809.121(a)(2) and §809.122(b)(2) to establish a minimum of 25 hours per week for a single-parent family and 50 hours per week for a two-parent family that parents must work or participate in training or education activities in order to receive at-risk child care services, or for child care services provided to children with disabilities. Boards, however, may set a higher number of required hours per week.

The Commission recognizes that family circumstances may dictate that exceptions be made to the minimum activity requirements. The Commission adds §809.121(a)(5) and §809.122(b)(3) to allow Boards to reduce the minimum required activity hours per week if the parent's documented medical disability or the parent's need to care for a physically or mentally disabled family member prevents them from participating for the required weekly activity hours.

The Commission adds §809.121(b) and §809.122(c) to provide that each credit hour of postsecondary education count as three hours of education activity to be applied toward the education activity hours required in §809.121(a)(2) and §809.122(b)(2) respectively.

The Commission believes that requiring parents of children living at low incomes, including parents with children with disabilities, to participate in work or education activities will assist these families in becoming self-sufficient. A recent study by the Heritage Foundation found that if low-income, working families increase the number of hours they work each year from the current 700 to 2000 hours there would be an 80 percent reduction in child poverty. The Foundation concluded that policies that encourage work should be included in any poverty-reducing strategy.

#### §809.122. Children with Disabilities.

The Commission redesignates §809.122(c) to (d) and changes it in order to clarify rule language regarding the age eligibility for a child with disabilities. Previous language stated that Boards may extend child care services to children with disabilities who are "between the ages of 13 and 19." Previous rule language could have been interpreted to mean that services can be provided to 19-year-olds. The federal child care regulations in §98.20(a)(ii) allow child care services to children with disabilities who are under 19 years of age. The Commission changes the language to make it clear that 19-year-olds are not eligible for child care services.

#### §809.123. Children of Teen Parents.

The Commission changes §809.123(b)(2) to clarify that Boards have the authority to set higher income eligibility limits for children of teen parents than the Board's basic eligibility limits, provided the limit does not exceed 85 percent of SMI. The Commission makes this addition in order to clarify its intent and reinforce that provision in the CCDF State Plan.

The Commission changes §809.123(c)(2) in order to clarify when the income of a grandparent must be included in determining income eligibility for a teen parent's child. Previous rule language stated that if a teen parent "is, or has been, married" then the child's grandparent's income is not included in the income eligibility calculation. Section 809.123(c)(2)(B) was intended to apply only to teen parents not living with their parents. However, some Boards interpreted it to apply to teen parents residing with their parents. The Commission removes §809.123(c)(2)(B) to clarify that the gross income of the teen's parent(s) is excluded only if the teen does not reside in the same home as the teen's parent(s). The rule change also clarifies that any monetary amount given to the teen parent by his or her parent(s) who are not residing with the teen parent, must be included in calculating the teen parent's income eligibility.

#### §809.225. Continuity of Care.

The Commission changes §809.225(a) to clarify that families whose transitional child care has expired should be placed in at-risk care, if they remain eligible for child care services. In some workforce areas, families whose transitional child care benefits have expired are not rolled into at-risk child care, but put on a waiting list for child care services. That is not the intent of the continuity of care rule. In order to comply with the continuity of care principle, when the family's transitional child care has expired the children should remain in child care if the family continues to meet the Board's eligibility criteria.

#### §809.226. Provider Payments.

The Commission changes §809.226 by removing the obsolete reference to a "master contract" with Boards. The "master contract" referenced in the previous rule is now called an "Agency-Board" agreement.

#### §809.231. Provider Reimbursement Rates.

The Commission changes §809.231 by adding new subsections (b) and (c) and relettering subsequent subsections.

The Commission adds §809.231(b) in order to establish Commission expectations that Boards not reimburse any provider more than the individual Board's maximum rate or the provider's published rate, whichever is lower. There is no provision in the CCDF federal regulations (45 CFR, Parts 98 and 99) to prohibit a state (or Board) from reimbursing providers at a rate that is higher than the Board's maximum rate. However, the Preamble to the federal CCDF regulations does remind the states of the "...general principle that federal subsidy funds cannot pay more for services than is charged to the general public for the same service."

It is the Commission's expectation that the Boards will adhere to the guidance in the Preamble of the federal CCDF regulations, and that Boards will reimburse providers at the lower of the Board's maximum reimbursement rate or the provider's published rate. That is the current practice among the Boards. However, there is no current rule in place to reinforce that expectation.

The Commission adds §809.231(c) to require Boards to establish the same maximum rate within each category of care for all regulated providers even if the provider is self-arranged by the parent and does not have a signed agreement with the Board.

Currently, Boards are using three approaches to setting the maximum reimbursement rates for the three categories of providers. Eight Boards reimburse regulated, self-arranged providers at the same rate as regulated providers with signed agreements

while unregulated, relative providers are reimbursed at a lower rate. Eleven Boards reimburse all self-arranged providers (regulated facilities and unregulated relatives) at the same lower rate than paid to regulated providers with signed agreements. Nine Boards have three sets of maximum rates for each facility type and age group: one rate for providers with agreements; a lower rate for regulated, self-arranged providers; and an even lower rate for unregulated, relative care.

The Commission understands why Boards would reimburse unregulated, relative providers, who are not required by the state to maintain health and safety standards, at a lower rate than regulated providers who do have to maintain such standards. The Commission, however, believes that the practice of reimbursing regulated providers at different rates simply because the provider has an agreement with the Board limits parental choice, since many providers without an agreement may refuse to accept CCDF subsidized children because they will be reimbursed at a lower rate than regulated providers with agreements.

#### §809.271. Child Care During Appeal.

The Commission changes §809.271(b) regarding continuing child care during the appeal process in order to address concerns raised by Boards regarding the cost of paying for such care. Specifically, the Commission adds paragraph (8) to stipulate that child care services shall not be provided during the appeal process if child care was terminated, reduced, denied or delayed due to the parent's failure to report, within 10 days, changes in a family's circumstance that would make the family ineligible for child care services.

The Commission also changes §809.271(b)(4) to clarify that child care services shall not be provided during the appeal process if the child's care was terminated, reduced, denied or delayed due to lack of funding caused by an increase in the number of enrolled children in state and Board priority groups.

#### §809.283. Corrective and Adverse Action.

The Commission changes §809.283(e) in order to clarify the rule citation regarding sanctions that may be imposed on a contractor for failure to comply with the Service Improvement Agreement. The list of possible sanctions is provided in §809.283(a) and (c), not in §809.283(b) as (e) previously stated. The rule language is made more general to refer to all sanctions listed in the section.

#### Repeal of Subchapter O, Child Care Train Our Teachers (TOT) Award

The Commission repeals the rules regarding the Train Our Teachers (TOT) Award and discontinues the scholarship program based on authority granted in SB 280 enacted by the 78th Legislature, Regular Session.

### PART III. COORDINATION OF ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of each of Texas' twenty-eight Local Workforce Development Boards. The Commission provided policy concepts to the Boards for consideration and review pursuant to Texas Labor Code §302.064 and the Commission's Resolution Regarding Board Coordination in Policy Development adopted September 24, 2002. Prior and during this rulemaking process, the Commission considered the Boards' comments. In addition, the Commission held discussions with the Workforce Leadership of Texas (WLT) Policy Committee and the Child Care Network regarding the development and implementation of these rules.

### PART IV. PUBLIC COMMENTS AND RESPONSES

Public comments were received from the following: Alamo Workforce Development Board; Concho Valley Workforce Development Board; North Texas Workforce Development Board; Permian Basin Workforce Development Board; State Representative Norma Chavez; Economic Opportunities Advancement Corporation, Advisory Committee for Region XI/Child Care Services; Camino Real Child Care Coalition; YWCA--El Paso; Professional Home Child Care Association; and home child care providers: Lori Arezaz, Veronica Carrillo, Ana Carronch, Delmara Castillo, Maria Garcia, Sanda Garcia, Elvia Holguin, Veronica Ortiz, Lorraine Romero, and Michelle Wyche.

Some commenters were for the rules, some disagreed with the changes, and some made recommendations for changes to the proposed language. The comment summaries and responses are as follows:

#### §809.44. Provider General Liability Insurance Requirements.

Comment: Twelve commenters agreed with the rule change. (Note: The commenters expressed their opposition to the previous rule allowing Boards the option of requiring liability insurance for home child care providers. Therefore, the commenters support the proposed rule prohibiting Boards from requiring liability insurance for home child care.)

The commenters stated that most of the new TDFPS licensing standards are the same for licensed home and centers. One of the few exceptions is that the law does not require liability insurance or commercial transportation insurance from child care home providers. One of the commenters stated that TDFPS does not require child care homes to have liability insurance, because the agency realizes that insurance is costly for home care providers and TDFPS does not deem the expense necessary for child care homes.

Response: The Commission agrees that child care rules should not allow Boards to set liability insurance requirements in excess of those required by state law. The Commission further agrees that liability insurance is a financial hardship on home-based providers.

Comment: One commenter stated that Boards should be allowed to decide whether liability insurance should be required of registered family home providers. The commenter stated that the cost of the insurance is minimal and is a basic business expense.

Response: The Commission does not agree that liability insurance is a minimal business expense for any child care provider, especially a home care provider. Eleven home care providers submitted comments as part of this solicitation indicating that liability insurance is a major financial burden for them.

Comment: Six commenters opposed the rule change. The commenters stated that requiring liability insurance from providers with agreements protects the Boards and child care contractors from lawsuits. Even though Boards and child care contractors should not be liable for the safety of children, they can and will be sued if a parent perceives them to be liable. If the child care home is not insured, the parent may sue the contractor or the Board.

Response: It may be true that parents can sue any entity that they perceive as liable for the protection of their children. For

that reason it is important that Boards and child care contractors take steps to ensure that parents are not under the impression that child care providers with agreements are "approved" or otherwise regulated by the Boards or contractors. The Boards and contractors should not encourage the perception of Board or contractor liability. The Commission believes that by requiring liability insurance from the providers, the Boards and contractors may be encouraging the perception that they are liable for the safety for children in care.

The Texas Legislature provided a clear mandate that only licensed child care centers should be required to have liability insurance. The Legislature also gave TDFPS the statutory authority to ensure compliance with state law. The Boards' roles should not extend any further than ensuring that licensed child care centers are in good standing with TDFPS and informing parents of the providers' liability insurance status as required by §809.14.

Comment: Three commenters stated that requiring liability insurance allows the Boards to ensure or protect the health and safety of children in subsidized care as required in §809.15 of the child care rules.

Response: The Commission does not agree with the premise that having liability insurance ensures the health and safety of children any more than having automobile insurance is an indicator of safe driving. Liability insurance does not make children any safer while in care. Liability insurance may protect the child care provider in case an accident occurs at the provider location; it does not provide health and safety protection for the children in care.

Comment: One commenter contended that several child care rules imply that contractor and Boards are required by the Commission to assume responsibility for the safety of children at contracted sites. Among the rules the commenter cite are §809.13 and §809.15 requiring Boards to provide orientation and training for child care providers in order to ensure parental choice and improve quality, and §809.14 requiring Boards to make a consumer guide available to parents. Furthermore, the commenter cited §809.42 requiring Boards to ensure that the care provided is in compliance with a provider agreement and that the providers are not subject to corrective or adverse action with TDFPS. These activities could imply the contractor is affirming that the child will be safe.

Response: The training referenced in §809.13 is industry-wide and is not restricted to providers accepting subsidized children or providers with agreements. The Commission does not agree that training provided to all child care providers implies that contractors are affirming that children in these facilities will be safe.

Section 809.14(a)(3) requires Boards to provide consumer education and a list of providers with agreements. The section also states that this consumer information should indicate whether the provider has liability insurance or not. Parents can then make their choice of child care provider with this information in mind. Providing information as to whether the provider has insurance does not assume Board or contractor liability.

The Commission agrees that Boards shall ensure that the provisions of the provider agreements are met. However, the only specific requirement of provider agreements listed in the child care rules (§809.43) is that the agreements include notices and terms that detail provider obligations for complying with federal and state statutes and regulations and that discrimination is prohibited. Any additional requirements in the agreements, such as liability insurance, are monitored simply because the Board

has decided to include them in the agreement. It is the Commission's belief that by requiring liability insurance and monitoring for compliance, Boards are encouraging the perception that they are liable for the safety of the children. The Commission recognizes state law places the monitoring and regulation of the child care industry solely within the purview of TDFPS and that additional monitoring and regulation by the Boards increases the cost of care, and yet duplicates TDFPS' statutorily granted powers. Boards may not require more strenuous insurance requirements than those imposed by state law.

Comment: Two commenters stated that when child care contractors certify that a Texas Rising Star (TRS) provider is providing care that exceeds required state standards, this reflects a representation of quality by the Boards. Therefore, the commenters believe child care rules force contractors and Boards to accept partial liability for the safety of the children in child care.

Response: The Commission disagrees that the certification and monitoring requirements associated with the Texas Rising Star (TRS) provider status imply Board or contractor liability for the safety of the children in care. TRS certification indicates that the provider has attained certain quality criteria; however, these quality criteria do not include having liability insurance.

Comment: Two commenters stated that the new rule would prevent Boards from requiring licensed child care centers from listing the child care contractor as the "additional insured" in the center's liability insurance. If the contractor is not listed, then the responsibility for defending a lawsuit falls to the child care contractor and not the child care center.

Response: The Commission believes that by listing the contractor as the "additional insured," a court could interpret that as accepting liability. The rule language prevents Boards from requiring licensed child care centers from listing the child care contractor as the "additional insured" in the center's liability insurance. This is an added cost to licensed centers and is a requirement that exceeds the state licensing standards. The Commission modified the proposed rule language in order to clarify this point.

Comment: One commenter suggested that if the rule is adopted, then the insurance field and report should be removed from the system.

Response: The Commission does not agree that insurance information should be removed from the system. Some home-based providers may elect to carry liability insurance, and that should be included as information in the consumer guide required in §809.14.

Comment: One commenter pointed out the inconsistency between the rule language in §809.44(a), which gives the Boards the flexibility to determine whether licensed child care centers are required to have liability insurance in order to have an agreement with the Board, and the stated principle in the preamble, which states that only TDFPS can determine the liability insurance requirements for licensed child care centers.

Response: The Commission agrees that the preamble and the proposed rule languages were inconsistent. In order to correct this inconsistency, the Commission revised rule language and deleted the previously proposed subsection (a) that allows the Boards the flexibility to determine if liability insurance will be required of licensed child care centers. Since determining licensing standards is a function of TDFPS, the Boards do not have the flexibility to determine if liability insurance will be required of licensed centers.

Comment: One commenter stated that child care contractors are placing payments for services rendered on hold pending the provider showing proof of liability insurance.

Response: It is the Commission's intent that child care contractors shall not place reimbursements for services rendered on hold pending proof of liability insurance. If the provider is a licensed child care center, the liability insurance requirement is monitored by TDFPS as part of the licensing requirements. The Commission believes that any adverse action due to the lack of liability insurance is the responsibility of TDFPS. Contractors should not withhold payment unless or until TDFPS changes the center's license status. If the provider is a licensed or registered child care home provider, contractors should not withhold payment for lack of insurance since this is not a requirement of TDFPS or state law.

#### §809.72. General Parent Rights.

Comment: One commenter was concerned that extending child care an extra 15 days would increase child care costs for the Boards.

Response: The Commission appreciates the concerns raised; however, state law requires this rule change. SB 280, enacted by the 78th Texas Legislature, Regular Session, requires that written notification be provided to the recipient at least 30 days before the effective date of the termination.

Comment: One commenter was concerned about extending child care an additional 15 days for a parent who is ineligible for child care.

Response: The Commission believes it was the intent of the Legislature that the 30-day notice apply only to at-risk parents whose child care is terminated to make room for priority groups. The legislative language, however, did not make that distinction. Consequently, the proposed rule language did not make that distinction either. The Commission has clarified the intent of the rule to state that the 30-day notification will apply only to parents whose child care is terminated to make room for priority groups. The current 15-day notification will continue to apply to those determined to be ineligible.

Comment: One commenter was concerned about §809.72(6)(B) requiring Boards to include in the 30-day notification information regarding other child care services for which the recipient may be eligible. The commenter believed that this would be an additional administrative burden on Boards and their contractors, and often there are no other known sources of child care assistance. Parents that formerly received child care assistance may be contacting other organizations that would not be able to help them in the current economic climate.

Response: The Commission appreciates the concerns raised; however, it does not have the authority to amend the proposed rule. Texas law, SB 280, requires the Boards to institute this practice.

#### §809.78. Parent Responsibility Agreement.

Comment: One commenter expressed concern about how Boards and their contractors can ensure adherence to the rule changes, because Boards do not have the capability to verify compliance with the filing of child support. This is an additional burden on staff and resources and both are stretched at the moment.

Response: The rule amendment serves to clarify what constitutes cooperation and to promote consistent practices regarding the parent's responsibility to the Office of the Attorney General (OAG). The Commission does not intend for the Boards to assume the role of the child support enforcement agency, and thereby verify compliance with the filing of child support. When child support is an issue, it is the parent's responsibility to provide documentation regarding his or her cooperation with the OAG. Boards and their contractors should request documentation regarding cooperation at initial eligibility determination and re-determination periods. If, however, a Board should learn at any time that a parent is not cooperating, the parent will be in violation of the Parent Responsibility Agreement (PRA).

#### §809.79. Parent Responsibility Agreement, Sanctions and Exceptions.

Comment: One commenter expressed concern that sanctions for non-compliance would be determined locally when the Texas Department of Human Services (TDHS) is responsible for verifying and imposing sanctions for failure to file for child support.

Response: TDHS is responsible for verifying and imposing sanctions for TANF recipients only. Section 809.79 concerns At-Risk and Transitional parents who are not covered by the TANF Personal Responsibility Agreement. The intent of this rule is to provide the Boards with more stringent sanctions for non-compliance with the child care PRA. It is not the intention of the Commission to place greater monitoring responsibilities on the Boards.

#### §809.101. Transitional Child Care.

Comment: One commenter was concerned that requiring former TANF recipients who were denied cash assistance due to employment and increased earnings to apply for transitional child care within 30 days of the TANF denial date could force parents to enroll in transitional care even if there is no immediate need for child care. For example, there are many after-school child care programs provided free to parents in the commenter's workforce area. A parent who becomes transitional at the end of March and only has until the end of April to apply for transitional child care, but only needs after school assistance which the parent is currently receiving free, would have to decide whether to enroll in the child care program and change the child's provider or leave the child where he or she is and try to find other arrangements for summer care. If the parent elects to enroll in subsidized child care, this would increase the cost of care and take away a slot from another family that needs care.

Response: The Commission appreciates the concern. The Commission has modified rule language to address the issue raised by the commenter. Section 809.101(1) does not have a time limitation for parents who have been denied cash assistance due to employment and increased earnings. Section 809.101(2), on the other hand, sets a 30-day application deadline for those recipients who are denied due to expiration of TANF time limits.

For parents who have become eligible for transitional child care due to increased earnings, §809.101(b) stipulates that they may receive child care for a period of 12 months from the effective TANF denial date regardless of when the former recipient applies for transitional child care. If the recipient is eligible for a TANF child caretaker exemption, child care shall be available for a period of 18 months from the effective TANF denial date.



§809.121, Children Living at Low Incomes and §809.122, Children with Disabilities

Comment: One commenter agreed with setting a minimum number of hours; however, the commenter was concerned that 30 hours may be difficult for many parents to attain. The commenter suggested the requirement be reduced to 25 hours. Many parents have part-time jobs, and these jobs are less than 30 hours per week. In order to meet the requirement, a second part-time job would be required. Also, the commenter was concerned that managing the work schedule for two part-time jobs would be very difficult, especially for jobs with irregular work schedules.

Response: The Commission appreciates the commenter's concerns. After a review of the average hourly work week for the top industries in which parents receiving subsidized child care work, the Commission agrees with the commenter's suggestion to have at-risk parents be engaged in work activities for a minimum of 25 hours per week.

Comment: One commenter questioned how the activity hour requirement would apply to two-parent families.

Response: The Commission appreciates the comment and agrees with clarifying the rule. The Commission has modified rule language to address how the activity-hour requirement is applied in a two-parent family. Section 809.121(a)(2) and §809.122(b)(2) state that parents must participate in a combination of training, education or employment activities for a minimum of 25 hours a week for a single-parent family and 50 hours a week for a two-parent family. This will be consistent with the Commission's policy regarding the responsibility of both parents in a family, and make the provisions similar to the requirements in Choices rules.

Comment: One commenter agreed with the proposed minimum work activity hours, however, it was not clear to the commenter if part-time child care can be offered to families participating in less than the minimum required hours per week.

Response: Parents are required to be working or in education or training activities for a minimum of 25 hours per week for a single-parent family and 50 hours per week for a two-parent family in order to obtain full-time or part-time child care. If the parents need part-time child care and meet the required activity hours, then the parent may access part-time child care.

Comment: One commenter suggested that rule language be clarified to indicate that the required hours may be a combination of work, education or training.

Response: The Commission appreciates the suggestion and agrees to clarify the language to specify that the 25 hours may be any combination of work, education or training.

Comment: One commenter agreed with setting a minimum number of work hours, but had a concern regarding the administrative burden on Boards in tracking the parent's actual work hours.

Response: The Commission does not intend to impose additional monitoring requirements on Boards that they do not already have to meet. The 25-hour work requirements will be handled similarly to the existing eligibility requirements. The Commission does not intend that actual hours would be tracked weekly for every parent. The Commission intends the 25-hour requirement apply to normal "scheduled work hours" as determined at certification and re-certification. The Commission recognizes that holidays and other scheduled leave would reduce the actual hours worked for a particular week. In most cases,

the Boards' attendance policy should cover situations in which the parent has scheduled or temporary work reductions.

Comment: One commenter agreed with setting a minimum number of hours, but requested clarification on how to handle situations where parents, through no fault of their own, cannot meet the required activity hours.

Response: Section 809.121 and §809.122 provide that the Board may reduce the required hours if health reasons or care for a disabled child prevents them from attaining the 25-hour requirement. No additional exceptions should be granted.

Comment: One commenter expressed concern about how the activity hours could be tracked in the child care system.

Response: The Commission appreciates the concern and is exploring the need to modify the system to include the number of hours the parent is scheduled to participate in work, education or training activities per week.

Comment: One commenter requested clarification on what activities could be counted toward the training requirement. For example, would going to a workforce center and working on a computer in a lab to learn Word or Excel count as a training activity, or does it have to be in a class where attendance is taken?

Response: The Board may determine the definition of a training activity.

Comment: One commenter requested guidance on how the activity requirement would affect Board policies on continuation of child care for parents who have lost employment for no cause. Many Boards, for example, allow a certain number of days of child care in order for parents to perform job searches. The commenter requested clarification on how these situations should be handled.

Response: The Commission does not intend that the 25-hour work activity would impose additional requirements or impact the current Board policies regarding continuation of care.

Comment: One commenter suggested that it is unfair to place a minimum participation requirement on at-risk eligible parents. These parents are working or going to school in order to be eligible for child care. They are not part of "welfare reform" and they are attempting to be self-sufficient.

Response: The Commission appreciates the concern. The Commission believes that requiring parents of children living at low incomes to participate in a minimum number of work or education activities will assist these families in becoming self-sufficient.

§809.225. Continuity of Care.

Comment: Concerning continuation of child care after the expiration of transitional time limits, one commenter did not have an issue with the rule change; however, the commenter requested that the current application include a feature to track and flag former transitional clients. This system feature would become critical if Boards have to remove children from care in order to make room for a priority client.

Response: The Commission would like to clarify that this is not a rule change. The Commission is amending the language to make the intent more clear. The Commission never intended that eligible parents be exempted from the continuity of care provisions of §809.225(a) when their transitional child care ends. However, once former transitional parents become at-risk parents, they are subject to the same discontinuation of care policy

as other at-risk parents. The same criteria for discontinuation apply to former transitional clients as any other at-risk clients. For that reason, there is no need to flag former transitional clients.

#### **§809.231. Provider Reimbursement Rates.**

**Comment:** Two commenters disagreed with §809.231(c) requiring Boards to establish the same maximum rate within each category of care for all regulated providers even if the provider is self-arranged by the parent and does not have a signed agreement with the Board. The commenters stated that providers with agreements have additional administrative and monitoring requirements. The difference in reimbursement is their incentive to meet the additional requirements. One commenter also suggested that this would take away the incentive for providers to sign agreements with the Board, and when this happens, Boards will lose all oversight on the quality of care being provided.

**Response:** Section 809.231(a) states that Boards shall establish reimbursement rates based on local factors including a market rate survey. The local factors are intended to include costs associated with providing services within the local market area. Local cost factors are applied equally to all providers within a category. The local cost factors should not include the additional monitoring and administrative costs caused by provider agreements. These additional costs and monitoring requirements placed on providers with agreements indicate that Boards are imposing additional requirements on providers in excess of state requirements. The Commission believes these additional monitoring requirements place an unnecessary burden on providers, represent duplication of effort with TDFPS requirements, and also artificially inflates the cost of care.

The additional requirements imposed by the Boards may be a factor in a disproportionate use in Texas of child care centers, and may actually be inhibiting home-based providers from participating in subsidized child care. Parents may not have access to all licensed child care centers, licensed child care homes or registered child care homes, since many providers without an agreement may refuse to accept CCDF children because they will be reimbursed at a lower rate than regulated providers with agreements. The data bear this out. Registered family homes make up 47 percent of all regulated child care facilities in Texas; however, only 16 percent of all regulated providers participating in Commission child care are registered family homes. By contrast, 43 percent of all regulated child care providers in Texas are child care centers; however, 73 percent of regulated providers serving Commission subsidized children are child care centers.

**Comment:** Two commenters disagreed with the rule stating that this change would eliminate Board flexibility to set rates, which is what §809.231(a) requires them to do. This will eliminate local board decision making, thereby making it harder to serve the needs of the local workforce.

**Response:** Section 809.231(a) states that Boards shall set reimbursement rates based on local factors, including a market rate survey. The Commission believes that the additional costs associated with provider agreements may not be considered a local cost factor in setting reimbursement rates. The amendment does not eliminate local flexibility since Boards still have the flexibility to set rates for each category of care.

**Comment:** One commenter expressed concern that this requirement would increase the Board's cost about 15 percent. If the children are Choices referrals, the costs would increase as much as 60 percent. This increased cost will negatively impact the Board's ability to meet the average number of children served.

**Response:** The Commission has analyzed the fiscal impact of reimbursing all regulated providers at the same rate within each category and has come to a very different conclusion than the commenter. The Commission's analysis found that for FY02, paying all regulated providers (including SACC providers) the same actual average rate as providers with agreements would increase costs by less than two-tenths of one percent. Therefore, the Commission does not agree that this rule change would negatively impact the Board's ability to meet performance measure regarding the average number of children served.

## **SUBCHAPTER A. GENERAL PROVISIONS**

### **40 TAC §809.1**

The repeal is adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John Moore

General Counsel

Texas Workforce Commission

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### **40 TAC §809.1**

The new rule is adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance

with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. GENERAL MANAGEMENT REQUIREMENTS

### 40 TAC §809.20

The repeal is adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. GENERAL MANAGEMENT

### 40 TAC §809.20

The new rule is adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

§809.20. *Leveraging Local Resources.*

(a) *Leveraging Local Funds.* The Commission encourages Boards to secure local public and private funds for match to the extent possible to leverage all available resources for child care needs in the community.

(1) A Board may secure local funds for match in the form of one or more of the methods in order to leverage (match) against federal funds available through the Commission:

(A) donations of funds from a private entity;

(B) certification of expenditures by a private entity that represent expenditures eligible for federal match and that were not restricted in their use for a specific individual, organization, facility or institution;

(C) transfers of funds from a public entity; or

(D) certifications of expenditures by a public entity that represent expenditures eligible for federal match.

(2) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.

(b) *Securing Local Funds to Access Federal Matching Funds from the Commission.*

(1) A Board shall manage the securing of funds, including the selection of pledged and completed donations, transfers, and certifications that are used by the Board to receive federal matching funds through the Commission.

(2) A Board shall ensure that federal matching funds are maximized by securing local funds for match in an amount that may exceed the amount required to match available federal funds.

(c) Documenting Pledged Donations, Transfers and Certifications. A Board shall maintain written documentation of pledged donations, transfers and certifications that contain, at a minimum, the following:

- (1) the signature of the representative of the Board;
- (2) the signature of the potential contributor;
- (3) the potential contributor's commitment to fulfill the pledge of the donation, transfer or certification by paying or certifying the funds to the Commission for use in a specific workforce area on a set payment or certification schedule;
- (4) the Board's commitment to use the donated or transferred funds as requested by the contributor, as long as it is consistent with federal regulations at 45 CFR §98.53; and
- (5) sufficient information to determine that the funds will be used in a manner consistent with 45 CFR §98.53.

(d) Submitting Pledged Donations, Transfers and Certifications for Acceptance by the Commission. A Board shall submit pledged donations, transfers, and certifications to the Commission for acceptance.

(e) Completing Donations, Transfers and Certifications.

(1) A Board shall ensure that donations of cash and transfers of funds are paid to the Agency and that certifications are also submitted to the Agency.

(2) Donations and transfers are considered complete to the extent that the funds have been paid to the Agency.

(3) Certifications are considered complete to the extent that a signed written instrument is delivered to the Agency that reflects that the public entity has expended a specific amount of funds on eligible child care services.

(f) Reporting. A Board shall report information relating to pledged and completed donations, transfers and certifications as referenced in subsections (d) and (e) of this section and §800.72 of this title (relating to Reporting Requirements).

(g) Monitoring. A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of unmatched federal funds available through the Commission do not exceed an amount that corresponds to the donations, transfers, and certifications that are completed by the end of the program year.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. REQUIREMENTS TO PROVIDE CHILD CARE

### 40 TAC §809.44, §809.46

The repeals are adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### 40 TAC §809.44, §809.46

The new rules are adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations.

Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

**§809.44. Provider General Liability Insurance Requirements.**

(a) Any liability insurance requirements placed on licensed child care centers by the Boards shall not exceed the state licensing requirements stipulated in Chapter 42 of the Texas Human Resources Code.

(b) A licensed child care center provider must notify the Texas Department of Family and Protective Services (TDFPS), the parent, and the Board if the provider is unable to secure the required insurance due to financial reasons or for lack of availability of an underwriter willing to issue a policy, or if the provider's policy limits have been exhausted. The provider shall remain eligible to receive Commission-funded child care subsidies as long as the provider is licensed by the TDFPS.

(c) Boards shall not require liability insurance for providers who are not required by state law to have liability insurance.

**§809.46. Assessing and Collecting Parent's Share of Cost.**

(a) For child care funds allocated by the Commission pursuant to its allocation rules (Chapter 800, General Administration, Subchapter B, Allocation and Funding, §800.58 of this title (relating to Child Care)), the following shall apply.

(1) A Board shall set a parent's share of cost policy in accordance with the requirements set forth in §809.12 of this chapter (relating to Board Policies and Plans for Child Care Services) that shall assess parent's share of cost in a manner that results in parent's share of cost:

(A) being assessed to all parents or caretakers, except in instances when an exemption under paragraph (2) of this subsection applies;

(B) being based on the family's size and gross monthly income, and may also be based on the number of children in care; and

(C) not exceeding the cost of care.

(2) Parents that are one or more of the following are exempt from paying parent's share of cost:

(A) parents who are participating in Choices;

(B) parents who participate in the Food Stamp Employment and Training; or

(C) parents who have children that are receiving protective services unless the Texas Department of Family and Protective Services assesses parent's share of cost.

(3) Teen parents who live with their parents and who are not covered under exceptions outlined under paragraph (2) of this subsection shall be assessed parent's share of cost. The parent's share of cost is based solely on the teen parent's income.

(b) For child care services funded from sources other than those sources for funds allocated by the Commission for Child Care Services pursuant to its allocation rules, a Board shall set a parent's share of cost policy based on a sliding fee scale that may be the same as or different from the provisions contained in subsection (a) of this section.

(c) Providers shall collect assessed parent's share of cost and subsidies before child care is delivered.

(d) It is the sole responsibility of the provider to collect assessed parent's share of cost and subsidies.

(e) A Board shall establish a policy regarding reimbursement of providers to address consequences for providers in situations when parents fail to pay parent's share of cost and subsidies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. SELF-ARRANGED CARE

### 40 TAC §809.61, §809.62

The repeals are adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### 40 TAC §§809.61 - 809.63

The new rules are adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

*§809.61. Qualifications to Provide Unregulated Relative Self-Arranged Care.*

(a) A relative who is at least 18 years of age and is one of the following is eligible to provide self-arranged care:

- (1) the child's grandparent;
- (2) the child's great-grandparent;
- (3) the child's aunt;
- (4) the child's uncle; or

(5) the child's sibling, if the sibling does not reside in the same household as the eligible child.

(b) A relative providing self-arranged care under this section shall not be reimbursed for more children than permitted by the Texas Department of Family and Protective and Regulatory Services' minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for in self-arranged care situations on a case-by-case basis as determined by the Board.

*§809.62. Qualifications to Provide Regulated Self-Arranged Care.*

(a) If chosen by the parent, a person or entity who has not signed a Provider Agreement is eligible to provide self-arranged care if the person or entity is:

- (1) licensed by the Texas Department of Family and Protective Services; or
- (2) registered with the Texas Department of Family and Protective Services; or
- (3) listed with the Texas Department of Family and Protective Services; or
- (4) licensed by the Texas Department of Health as a youth day camp; or
- (5) operated and monitored by the United States military services.

(b) A Board shall ensure that requests made by the Texas Department of Family and Protective Services, for specific providers or persons eligible to provide self-arranged care, are enforced for children in protective services.

(c) Before authorizing a person or entity "listed" with the Texas Department of Family and Protective Services to provide child

care, a Board shall ensure that there are in effect, under local law, requirements designated to protect the health and safety of children that are applicable to the persons or entities "listed" with the Texas Department of Family and Protective Services. Boards may choose not to allow "listed" providers as self-arranged providers. Pursuant to federal regulations at 45 Code of Federal Regulations §98.41, the requirements shall include:

- (1) the prevention and control of infectious diseases (including immunizations);
- (2) building and physical premises safety; and
- (3) minimum health and safety training appropriate to the child care setting.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER E. PARENT RIGHTS AND RESPONSIBILITIES

### 40 TAC §§809.72, 809.78, 809.79

The repeals are adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

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#### 40 TAC §§809.72, 809.78, 809.79

The new rules are adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

#### §809.72. *General Parent Rights.*

Parents have the right to:

- (1) have persons represent them when applying for child care;
- (2) notification of their eligibility to receive child care within 20 days from the day the Board's contractor receives all necessary documentation required to determine eligibility for child care;
- (3) receive child care regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;
- (4) have the Board and the Board's contractor treat as confidential information that is used to determine eligibility for child care;
- (5) except as provided by paragraph (6) of this section, written notification by the Board's contractor at least 15 days before the denial, delay, reduction, or termination of child care unless the following exceptions apply:
  - (A) Notification of denial, delay, reduction, or termination in child care is not required when child care is authorized to cease immediately because either the parent is no longer participating in the Choices program; or child care is authorized to end immediately for children in protective services child care;
  - (B) The Choices program participants and children in protective services child care are notified, of denial, delay, reduction, or termination of child care and the effective date of such actions by the Choices case worker or the Texas Department of Family and Protective Services.

(6) 30-day written notification by the Board's contractor if child care is to be terminated in order to make room for priority groups.

(A) Written notification of denial, delay, reduction or termination shall include information regarding other child care services for which the recipient may be eligible.

(B) If the notice on or before the 30th day before denial, delay, reduction or termination in child care would interfere with the ability of the Board to comply with its duties regarding the number of children served or would require the expenditure of funds in excess of the amount allocated to the Board, notice may be provided on the earliest date on which it is practicable for the Board to provide notice.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. GENERAL ELIGIBILITY FOR CHILD CARE

#### 40 TAC §809.92, §809.93

The repeals are adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John Moore  
General Counsel  
Texas Workforce Commission  
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For further information, please call: (512) 463-2573



#### 40 TAC §809.92, §809.93

The new rules are adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### SUBCHAPTER G. CHILD CARE FOR PEOPLE TRANSITIONING OFF PUBLIC ASSISTANCE

#### 40 TAC §809.101

The repeal is adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance

with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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#### 40 TAC §809.101

The new rule is adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

#### §809.101. *Transitional Child Care.*

(a) A Board shall ensure that transitional child care services will be provided for children of parents who were formerly TANF recipients; and

(1) have been denied temporary cash assistance and were employed at the time cash assistance was denied; or

(2) have been denied temporary cash assistance within 30 days because of expiration of TANF time limits.

(b) Boards may establish a higher income eligibility limit for transitional child care, provided that the higher income limit does not exceed 85% of state median income for a family of the same size.



(c) Transitional child care shall be available for a period of up to 12 months from the effective date of the TANF denial, depending on income eligibility and whether the person is working, except in the case of a TANF recipient who is eligible for a child caretaker exemption and voluntarily participates in the Choices program. For these individuals, transitional child care is available for a period up to 18 months from the effective date of the TANF denial.

(d) TANF recipients who are not employed when temporary cash assistance expires, including recipients who are engaged in a Choices activity except as provided under subsection (e) of this section, shall receive up to 4 weeks of transitional child care in order to allow these individuals to search for work as needed.

(e) TANF recipients who are engaged in a Choices activity, are meeting the requirements of Chapter 811, and are denied temporary cash assistance due to receipt of child support, shall be eligible to receive transitional child care services until the date on which the individual completes the activity, as defined by the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John Moore

General Counsel

Texas Workforce Commission

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## SUBCHAPTER H. CHILDREN OF PARENTS AT RISK OF BECOMING DEPENDENT ON PUBLIC ASSISTANCE

### 40 TAC §§809.121 - 809.123

The repeals are adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John Moore

General Counsel

Texas Workforce Commission

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### 40 TAC §§809.121 - 809.123

The new rules are adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

§809.121. *Children Living at Low Incomes.*

(a) Children living at low incomes are eligible for child care if:

(1) the family income does not exceed the income limit established by the local Board; and

(2) child care is required for the child's parents to participate in a combination of training, education or employment activities for a minimum of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a local Board; or

(3) the parents of the children are receiving temporary cash assistance or Supplemental Security Income; and

(4) the parents receiving temporary cash assistance have met the Choices requirements as specified in Chapter 811 of this title, or have been determined by the Board to need child care to comply with those requirements, if the parents are subject to those requirements.

(5) A Board may allow a reduction to the requirement in subsection (a)(2) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in the activities for the required hours per week.

(b) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, each credit hour of postsecondary education will count as three hours of education activity per week.

**§809.122. Children with Disabilities.**

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Children with disabilities--Individuals who meet the age requirements set forth in this subchapter and who are mentally or physically incapable of caring for themselves and meet the criteria set forth in this section.

(b) Children with disabilities are eligible for child care if residing with parents:

(1) whose income, after deducting the cost of the child's ongoing medical expenses, does not exceed the income limit established by the local Board; and

(2) child care is required for the child's parents to participate in a combination of training, education or employment activities for a minimum of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a local Board.

(3) A Board may allow a reduction to requirement in subsection (b)(2) of this section if the need to care for a child with disabilities prevents the parent from participating in the activities for the required hours per week.

(c) For purposes of meeting the education requirements stipulated in subsection (b)(2) of this section, each credit hour of postsecondary education will count as three hours of education activity per week.

(d) A Board may elect to extend child care services to children with disabilities who are 13 to 19 years of age, provided that the other provisions in this section are also met.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John Moore

General Counsel

Texas Workforce Commission

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## SUBCHAPTER K. FUNDS MANAGEMENT

### 40 TAC §§809.225, 809.226, 809.231

The repeals are adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance

with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel

Texas Workforce Commission

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### 40 TAC §§809.225, 809.226, 809.231

The new rules are adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

#### §809.225. Continuity of Care.

(a) General Principle. Enrolled children, including children whose eligibility for transitional child care has expired, shall receive child care as long as the family remains eligible for any available source of Commission-funded child care except as otherwise provided under subsection (b) of this section.

(b) Exceptions. Nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care, except when removal from care is required for child care to be provided to a child of parents eligible for one or more of the following types of priority child care:

- (1) Choices Child Care under §809.102 of this Chapter,
- (2) Transitional Child Care under §809.101 of this Chapter,

or

(3) Workforce Orientation Applicant Child Care under §809.103 of this Chapter.

(c) Former Texas Department of Family and Protective Services (TDFPS) children as referenced in §809.105(b)(1) of this Chapter shall also continue receiving child care funded through the Commission for the period chosen by TDFPS, which shall not exceed six months, so long as it does not result in another child being removed from care.

(d) Former TDFPS children as referenced in §809.105(b)(2) of this Chapter may continue receiving child care funded through the Commission if it does not result in removing another child from care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John Moore

General Counsel

Texas Workforce Commission

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## SUBCHAPTER M. APPEAL PROCEDURE

### 40 TAC §809.271

The repeal is adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John Moore

General Counsel

Texas Workforce Commission

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### 40 TAC §809.271

The new rule is adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER N. CORRECTIVE AND ADVERSE ACTION

### 40 TAC §809.283

The repeal is adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance

with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John Moore

General Counsel

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#### 40 TAC §809.283

The new rule is adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

#### §809.283. *Corrective and Adverse Action.*

(a) Corrective and adverse action (corrective action) may include sanctions set forth in Chapter 800, Subchapter E of this title (relating to Sanctions) and may include, but not be limited to, the following:

- (1) requirement that the Board's contractor enter into a Service Improvement Agreement (SIA);
- (2) suspension, nonrenewal, or termination of the enrollment agreement, Provider Agreement, contract for service delivery, other Board subcontracts, or the Board contract;
- (3) temporarily withholding of payments;

(4) nonpayment of costs incurred; and

(5) recoupment of funds.

(b) When determining which corrective actions are appropriate, the following shall be considered:

(1) the scope of the violation;

(2) the severity of the violation;

(3) the compliance history of the person or entity; and

(4) in the case of contractors, the contractor's failure to meet Commission performance standards.

(c) Corrective action may include, but is not limited to, the following:

(1) closing intake;

(2) moving children to another provider facility selected by the parent;

(3) holding provider payments; and

(4) terminating, suspending, or not renewing a Provider Agreement if the Texas Department of Family and Protective Services has cited a provider for serious or continued noncompliance with the minimum licensing standards or placed the provider on some form of corrective or adverse action.

(d) When a Board's contractor or provider violates a contract or agreement, a written SIA may be negotiated between the Commission, Board, Board's contractor, or provider. At the least, the SIA shall include, the following:

(1) the basis for the improvement agreement;

(2) the steps required to reach compliance including, if applicable, technical assistance;

(3) the time limits for implementing the improvements; and

(4) the consequences of noncompliance with the agreement.

(e) Failure to fully comply with the terms of the SIA may result in the imposition of one or more of the sanctions set forth in this section and Chapter 800, Subchapter E of this title (relating to Sanctions).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel

Texas Workforce Commission

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#### SUBCHAPTER O. CHILD CARE TRAIN OUR TEACHERS (TOT) AWARD

40 TAC §§809.301 - 809.304, 809.311 - 809.314, 809.331, 809.332

The repeals are adopted in response to and under the authority of the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which provides for the consolidation of job-training, employment, and employment-related educational programs and functions under the authority of the Commission.

Section 44.002, Human Resources Code provides for the Commission promulgating rules to carry out the administrative provisions of the program consistent with federal law and regulations. Chapter 31, and including §31.0035, Human Resources Code provides for transitional child care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 815. UNEMPLOYMENT INSURANCE

### SUBCHAPTER B. BENEFITS, CLAIMS AND APPEALS

#### 40 TAC §815.16

The Texas Workforce Commission (Commission) adopts the amendment of §815.16, Appeals to Appeal Tribunals from Determinations, to Chapter 815, Unemployment Insurance, Subchapter B, Benefits, Claims and Appeals, with changes to the text as proposed in the August 22, 2003, issue of the *Texas Register* (28 TexReg 6799).

The adoption document is organized into three parts:

Part I. Purpose and Background.

Part II. Comment Summaries and Responses.

Part III. Amended Rule.

Part I. Purpose and Background.

A. Purpose. Texas Labor Code §212.101, V.T.C.A. authorizes the Commission to establish one or more impartial Appeal Tribunals to hear and decide disputed claims, if the establishment of these Appeal Tribunals is necessary to ensure prompt disposal of cases on appeal; accordingly, Appeal Tribunals were

established. The purpose for amending the Rule 816.16 is to implement the provisions of Section 212.106 of the Texas Labor Code. Section 212.106 directs the Commission to develop procedures by which an Appeal Tribunal will conduct unemployment insurance telephone conference hearings.

B. Background: On June 20, 2003, Senate Bill 280 (SB 280), 78th Texas Legislature, Regular Session, was signed into law. SB 280 included Section 7A.02 that amended Chapter 212, Texas Labor Code entitled *Dispute Resolution* by adding §212.106. Section 212.106 entitled *Rules Regarding Hearings Conducted by Telephone Conference*, provides that "the Commission, by rule, shall develop procedures to ensure that an Appeal Tribunal make every effort in a hearing conducted by telephone conference under...[the Texas Unemployment Compensation Act] to obtain all relevant facts and evidence from the parties to the appeal." Amendments to Rule 815.16 are being adopted by the Commission. The amendment ensures that the current unemployment insurance rules reflect the requirements set out in §212.106.

In accordance with the requirements of federal law 42 USC §503 and 20 C.F.R. Part 650, the Commission instituted an impartial Appeal Tribunal to adjudicate appeals from initial determinations pertaining to the payment of unemployment insurance benefits to claimants and whether these benefits are charged to base period employer(s). The Commission promulgated rules governing the administration of the unemployment insurance benefits process including procedures for appealing Commission decisions and conducting the hearings. Commission Rule 815.15 defines who is a "Party of Interest" to an appeal. Commission Rule 815.16, addresses relevant aspects of the hearing procedure applicable to telephone hearings and the responsibilities of an Appeal Tribunal. Commission Rule 815.18 provides for general rules for both the Appeal Tribunal and Commission level appeals. Rule 815.19 provides guidance for the conduct of unemployment fraud hearings. Commission Rule 815.32 defines when an appeal will be considered timely.

Coordination Activities. The Commission circulated the proposed rule to the Board chairs, members and executive directors, and the Texas Association of Workforce Boards Policy Committee (formerly known as the Workforce Leadership of Texas (WLT) Policy Committee). The U.S. Department of Labor (DOL) was sent a copy of the proposed rule for comment.

#### Part II. Comment Summaries and Responses.

The Commission received comments on the rule from the following: State Representative Scott Hochberg and Richard Levy on behalf of the Texas AFL-CIO. The commenters indicated their belief that more instructive language should be included in the proposed rule to ensure that all of the relevant evidence is received in the hearing. A summary of the comments and responses to the comments are as follows.

Comment: State Representative Scott Hochberg, the author of the language in SB 280, commented that he avoided the use of very prescriptive language in the statute to give the Commission some latitude in developing this program. However, he was concerned that the proposed revision did not give the Appeal Tribunals enough guidance. For instance, he suggested that the rule should ensure adequate record development. The rule should provide that the Appeal Tribunal has the responsibility to develop the record adequately to make sure the entire circumstances of the relevant issues involved in the case are discussed.

The goal of the proceeding is complete fact-finding, not adherence to specific legal rules of procedure.

Response: The Commission appreciates the avoidance of use of very prescriptive language in the statute. The Commission has adopted hearing rules and maintains manuals including the Appeals Manual, Hearing Officer's Handbook and the Commission's Appeal's and Precedent Manual that describe hearing procedures to be used by the Appeal Tribunal. These documents reflect DOL requirements for fair hearing; they also enumerate the elements necessary for conducting quality hearings that are used in performance reviews of the Appeal Tribunals. DOL's Quality Appraisal requirements place a high level of responsibility on the Appeal Tribunal. Based on these directions, the Commission has the duty to ensure that the Appeal Tribunal adequately develops the hearing record concerning the relevant issues at the hearing. The Commission recognizes that one of the primary purposes of the administrative hearing is to complete fact-finding on the relevant issues in the case, while not maintaining unnecessarily strict levels of formality that precludes the parties from participating in the hearing. The directives from DOL are that these hearings are to be conducted as informal proceedings. These concepts must be balanced with the need to maintain order in the proceeding to ensure all parties have an opportunity to be heard. To reinforce these existing prescriptions, and to provide additional instructive language to ensure that the hearing record is adequately developed by the hearing officer, the Commission is amending Rule 815.16(3)(A) to clearly state that it is the responsibility of the Appeal Tribunal to ensure that all relevant issues are thoroughly explored during the hearing. The amendment also provides that the Appeal Tribunal actively develop the record by asking questions necessary to obtain pertinent facts concerning events related to the issues in the hearing. In addition, the Commission will include language in its Notice of Hearing packet of information to the parties that advises them, in boldface, that the parties should treat the hearing as if it will be the only chance they will receive to explain their side of the situation.

Comment: Richard Levy, on behalf of the Texas AFL-CIO, commented that the proposed rule did not give enough guidance to the Appeal Tribunals, and more instructive language was needed to require the Appeal Tribunal to communicate to the parties the importance of bringing forth any relevant testimony. The rule should have provided that the Appeal Tribunal have the obligation to develop the record to ensure all relevant testimony was in the record. This obligation included attempting to contact potentially available witnesses during the hearing. The Appeal Tribunal should have been given the authority to continue the hearing to another date to obtain the testimony of additional witnesses. The rule should also have provided for the Appeal Tribunal to explain to the parties the relative weight of evidence between firsthand testimony, affidavits, and hearsay.

Response: The Commission refers Mr. Levy to the response to Representative Hochberg. In addition, the current version of the rule at 40 T.A.C. §815.16(4)(A) provides the Appeal Tribunal the authority to continue the hearing to another date to obtain the testimony of relevant witnesses. The Commission believes that the determinations regarding the quality of evidence is not a procedural matter appropriate for rule. Rather, it goes to the issue of the persuasiveness of the evidence, which is judged by the Appeal Tribunal and, subsequently, by the Commissioners. Under certain circumstances, the relative weight given to these types of evidence may vary, therefore, this is a matter best left to the discretion of the Appeal Tribunal who serves as the trier

of fact in the proceeding. For these reasons the Commission disagrees with the portion of the comments not addressed by the amendment to the Rule.

### Part III. Amended Rule.

The amended rule is adopted under the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has the authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 212.101, Texas Labor Code, which provides that the Commission shall establish one or more impartial Appeal Tribunals to hear and decide disputed claims if the establishment of those Appeal Tribunals is necessary to ensure prompt disposal of cases on appeal; and

Section 212.106, Texas Labor Code, which provides that the Commission by rule shall develop procedures to ensure that an Appeal Tribunal makes every effort in a hearing conducted by telephone conference to obtain all relevant facts and evidence from the parties to the appeal.

The adopted new rule affects Texas Labor Code, Title 4.

#### *§815.16. Appeals to Appeal Tribunals from Determinations.*

A party of interest may appeal a determination to the appeal tribunal. Appeals shall be in accordance with the terms of this section, §815.15 of this chapter (relating to Parties with Appeal Rights), §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages). As used in this section and in §815.17 and §815.18, the term "party" includes a person's or individual's representative. In this section, a reference to the term "supervisor of appeals" includes the supervisor's designee.

#### (1) Presentation of appealed claims.

(A) A party appealing from a determination made by an examiner under the provisions of the Act, shall file an appeal by hand delivery, mail, common carrier, facsimile (fax) transmission, or other method approved by the Agency in writing. A written appeal that is sent to the Agency should be addressed to the Texas Workforce Commission, 101 East 15th Street, Austin, Texas, 78778-0001, or faxed to the number provided in the determination. A written appeal may be hand delivered to the Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001, a local office of the Agency, or an agent state, or a workforce center or an office of a Board. The appeal should identify the determination being appealed, the basis for the appeal, the name of the party appealing, and the date of the appeal. The provisions of §815.32 of this chapter (relating to Timeliness) shall determine on what date the appeal was filed.

(B) Upon the scheduling of a hearing on an appeal or a petition to reopen, notice of the hearing shall be mailed to the parties at least five days before the date of the hearing. The notice shall identify the decision or determination appealed from and shall specify the time and date of the hearing, the party appealing, and the issue to be heard. If the hearing is an in-person hearing, the notice shall also specify the location of the hearing.

(2) Disqualification of appeal tribunal. The essence of a fair hearing lies in the impartiality of the appeal tribunal. An appeal tribunal should be free not only of any personal interest or bias in the appeal before it, but also of any reasonable suspicion of personal interest. No appeal tribunal shall participate in the hearing of an appeal in which that tribunal has a personal interest in the outcome of the appeal

decision. The appeal tribunal may withdraw from a hearing to avoid the appearance of impropriety or partiality. Challenges to the impartiality of any appeal tribunal may be heard and decided by the supervisor of appeals.

(3) Hearing of appeal.

(A) Consistent with §212.106 of the Act, all hearings shall be conducted informally and in a manner to ensure the substantial rights of the parties. All issues relevant to the appeal shall be considered and ruled upon. The parties to an appeal before an appeal tribunal may present evidence that may be material and relevant as determined by an appeal tribunal. The appeal tribunal shall examine parties and witnesses, if any, and may allow cross-examination to the extent the appeal tribunal deems necessary to afford the parties due process. The appeal tribunal, with or without notice to any of the parties, may take additional evidence that it deems necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.

(i) In conducting a hearing, the appeal tribunal shall actively develop the record on the relevant circumstances leading to the separation for hearings involving the issue of work separation and, for hearings involving other issues, the relevant facts to resolve those issues. It is the responsibility of the appeal tribunal to ensure that all relevant issues are thoroughly explored at the hearing.

(ii) The appeal tribunal shall ask any questions necessary to obtain pertinent facts concerning all events (such as job separation) that are at issue in the hearing.

(B) The parties to an appeal, with the consent of the appeal tribunal, may stipulate in writing the facts involved. The appeal tribunal may decide the appeal on the basis of a stipulation or, in its discretion, may set the appeal for hearing and take any additional evidence it deems necessary to enable it to determine the appeal.

(C) Hearings shall be conducted by telephone conference call unless the supervisor of appeals determines that an in-person hearing is necessary because a party with a physical impairment cannot effectively participate by telephone, because the nature of the evidence to be presented makes a hearing by telephone impractical, or because the supervisor of appeals otherwise determines that an in-person hearing is necessary. The rules and procedures in this chapter govern both in-person and telephone hearings. A party may request an in-person hearing by informally contacting, orally or in writing or by any other reasonable method of communication, the appeal tribunal or the supervisor of appeals before the scheduled time of the hearing and presenting information to support the request. The supervisor of appeals has the discretion to determine whether the party's request for an in-person hearing will be granted.

(4) Adjournment, continuance, and postponement of hearing.

(A) The appeal tribunal shall use its best judgment to determine when to grant a continuance or postponement of a hearing in order to secure all the evidence that is necessary and to be fair to the parties.

(B) Either prior to or during a hearing, an appeal tribunal, on its own motion or on the motion of a party of interest, may continue, adjourn, or postpone a hearing. The continuance, adjournment, or postponement shall not be for the purpose of delaying the proceeding and may be granted due to illness of the appellant, death in the immediate family of the appellant, or a pending criminal prosecution of the appellant. A continuance, adjournment or postponement may also be granted at the request of the appellant or appellee when

there is a need for an interpreter, religious observance, jury duty, court appearance, active military duty, or other reasons approved by the supervisor of appeals. Prior to the hearing, requests for a continuance or a postponement of a hearing may be made informally, either orally or in writing, to the appeal tribunal designated to hear the appeal or to the supervisor of appeals.

(5) Reopening of hearing before appeal tribunal.

(A) If a party fails to appear for a hearing, the appeal tribunal may hear and record the evidence of the party present and the witnesses, if any, and shall proceed to decide the appeal on the basis of the record unless there appears to be good reason for continuing the hearing. A copy of the decision shall be promptly mailed to the parties of interest with an explanation of the manner in which, and time within which a request for reopening may be submitted.

(B) A party of interest to the appeal who fails to appear at a hearing may, within 14 days from the date the decision is mailed, petition for a new hearing before the appeal tribunal in the manner set out in subsection (1)(A) of this section. The petition should identify the party requesting the reopening, the applicable decision of the appeal tribunal, the date of the petition, and explain the reason for the failure to appear. The provisions of §815.32 of this chapter (relating to Timeliness) shall determine on what date the petition was filed. The petition shall be granted if it appears to the appeal tribunal that the petitioner has shown good cause for the petitioner's failure to appear at the hearing. In the event that an appeal to the Commission is filed before the filing of the petition for reopening by the appeal tribunal, the appeal shall be referred to the Commission for review.

(C) For purposes of this section, the term "appear" shall mean participation by a party or a party's representative in the proceeding. Actions that may be considered as participation include offering testimony, examining witnesses, or presenting oral argument. If the hearing is a telephone hearing, a party or a party's representative shall appear at a hearing by calling on the date and at the time of the hearing and participating in the hearing proceedings. If the hearing is an in-person hearing, a party or a party's representative shall appear by being at the location of the hearing on the date and at the time scheduled for the hearing and participating in the hearing proceedings. Mere submission of written documents, whether sworn or unsworn, or observation of the proceedings shall not constitute an appearance.

(6) The determination of appeals.

(A) As soon as possible following the conclusion of a hearing of an appeal, the appeal tribunal shall issue its findings of fact and decision with respect to the appeal. The decision shall be in writing and shall reflect the name of the appeal tribunal who conducted the hearing and who rendered the decision. In the decision, the appeal tribunal shall set forth findings of fact and conclusions of law, with respect to the matters on appeal, and the reasons for the decision. Copies of the decision shall be mailed by the appeal tribunal to the parties of interest to the appeal. Upon request, courtesy copies may be mailed to other parties to the appeal.

(B) At any time during the 14-day period from the date a decision on an appeal is mailed, unless a party of interest has already appealed to the Commission, the appeal tribunal or the supervisor of appeals may assume continuing jurisdiction over the appeal for the purpose of reconsidering the issues on appeal and issuing a corrected decision. During the period in which continuing jurisdiction is assumed, the appeal tribunal, after notice to the parties, may take any additional evidence or secure any additional information it deems necessary to issue a decision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 6, 2004.

TRD-200400041

John Moore

General Counsel

Texas Workforce Commission

Effective date: January 26, 2004

Proposal publication date: August 22, 2003

For further information, please call: (512) 463-2573

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# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Agency Rule Review Plans

Texas Board of Physical Therapy Examiners

### Title 22, Part 16

Rule Review Plan at <http://www.sos.state.tx.us/texreg/review/2004/index.shtml>

TRD-200400217

Filed: January 14, 2004



Structural Pest Control Board

### Title 22, Part 25

TRD-200400076

Filed: January 7, 2004



## Proposed Rule Review

Texas Board of Physical Therapy Examiners

### Title 22, Part 16

The Texas Board of Physical Therapy Examiners files this notice of intent to review the rules as listed below, pursuant to Texas Government Code §2001.039 (Administrative Procedure Act).

The board's reasons for adopting the rules in these chapters continue to exist, and it proposes to readopt them all. Any rule amendments determined to be necessary during the review will be formally proposed at a subsequent board meeting, and will not be submitted simultaneously with the Notice of Readoption.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Nina

Hurter, PT Coordinator, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701, [nhurter@mail.capnet.state.tx.us](mailto:nhurter@mail.capnet.state.tx.us).

Chapter 321. Definitions

Chapter 322. Practice

Chapter 323. Powers and Duties of the Board

Chapter 325. Organization of the Board

Chapter 327. Compensation

Chapter 329. Licensing Procedure

Chapter 335. Professional Title

Chapter 337. Display of License

Chapter 339. Fees

Chapter 341. License Renewal

Chapter 342. Open Records

Chapter 343. Contested Case Procedure

Chapter 344. Administrative Fines and Penalties

Chapter 345. Accessible Services

Chapter 346. Practice Settings for Physical Therapy

Chapter 347. Registration of Physical Therapy Facilities

TRD-200400218

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Filed: January 14, 2004



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 28 TAC §34.814(f)

## Expired 1 to 90 days

	1 Renewal Fee	+	(Initial Fee)	=	Total Fee
Manufacturer	\$1,000.00		\$500.00		\$1,500.00
Distributor	\$1,500.00		\$750.00		\$2,250.00
Jobber	\$1,000.00		\$500.00		\$1,500.00
Pyrotechnic Operator	\$25.00		\$12.50		\$37.50
Pyrotechnic Special Effects Operator	\$25.00		\$12.50		\$37.50
Flame Effects Operator	\$25.00		\$12.50		\$37.50

## Expired 91 days to 2 years

	1 Renewal Fee	+	(Initial Fee)	=	Total Fee
Manufacturer	\$1,000.00		\$1,000.00		\$2,000.00
Distributor	\$1,500.00		\$1,500.00		\$3,000.00
Jobber	\$1,000.00		\$1,000.00		\$2,000.00
Pyrotechnic Operator	\$25.00		\$25.00		\$50.00
Pyrotechnic Special Effects Operator	\$25.00		\$25.00		\$50.00
Flame Effects Operator	\$25.00		\$25.00		\$50.00

Figure: 40 TAC Chapter 807--Preamble

Anticipated Potential Additional Costs to Schools

Section Number	Section Title or the title of the Subchapter in which the rules are contained.	Costs of compliance provided by <u>small businesses</u> of the following:		Costs of compliance provided by <u>large businesses</u>
		<u>small proprietary schools per Texas Education Code §132.054</u>	<u>large proprietary schools</u>	
§807.33	Financial Requirements for Changes in Ownership <sup>1</sup>	\$0 - \$160.00 (0 - 16 hrs @ \$10/hr)	\$0 - \$160.00 (0 - 16 hrs @ \$10/hr)	\$0 - \$160.00 (0 - 16 hrs @ \$10/hr)
§807.35	Financial Requirements for Renewal <sup>2</sup>	\$0 - \$100.00 (0 - 1hr @ \$100/hr)	\$0 - \$100.00 (0 - 1 hr @ \$100/hr)	\$0 - \$100.00 (0 - 1 hr @ \$100/hr)
§807.144	Enrollment Agreement <sup>3</sup>	\$0 - \$50.00 (0 - 5 hrs @ \$10/ hr)	\$0 - \$50.00 (0 - 5 hrs @ \$10/ hr)	\$0 - \$50.00 (0 - 5 hrs @ \$10/ hr)
§807.252	Tuition Trust Account (Tuition Protection Fund) <sup>4</sup>	\$75.00 (0 - 5 hrs @ \$15/hr)	\$75.00 (0 - 5 hrs @ \$15/hr)	\$75.00 (0 - 5 hrs @ \$15/hr)
§807.275	Agreements to Hold the Hearing at a Later Date <sup>5</sup>	\$0 - \$7.50 (0 - 0.5 hr @ 15/hr)	\$0 - \$7.50 (0 - 0.5 hr @ 15/hr)	\$0 - \$7.50 (0 - 0.5 hr @ 15/hr)
§807.276	Hearing <sup>6</sup>	\$360.00 (0 - 16 hrs @ \$20/hr)	\$360.00 (0 - 16 hrs @ \$20/hr)	\$360.00 (0 - 16 hrs @ \$20/hr)
§807.277	Evidence <sup>7</sup>	\$0 - \$4000.00 (0 - 40 hrs @ \$100/hr)	\$0 - \$4000.00 (0 - 40 hrs @ \$100/hr)	\$0 - \$4000.00 (0 - 40 hrs @ \$100/hr)
§807.279	Hearing Procedure <sup>7</sup>	\$0 - \$1600.00 (0 - 16 hrs @ \$100/hr)	\$0 - \$1600.00 (0 - 16 hrs @ \$100/hr)	\$0 - \$1600.00 (0 - 16 hrs @ \$100/hr)
§807.280	Continuance of Hearing <sup>7</sup>	\$0 - \$800.00 (0 - 8 hrs @ \$100/hr)	\$0 - \$800.00 (0 - 8 hrs @ \$100/hr)	\$0 - \$800.00 (0 - 8 hrs @ \$100/hr)
§807.281	Hearing Decision and Final Review by the Commissioners <sup>7</sup>	\$0 - \$500.00 (0 - 5 hrs @ \$100/hr)	\$0 - \$500.00 (0 - 5 hrs @ \$100/hr)	\$0 - \$500.00 (0 - 5 hrs @ \$100/hr)
§807.282	Effect of the Cease and Desist Order <sup>8</sup>	\$0 - \$1000.00/day dependent on the number of days to become compliant.	\$0 - \$1000.00/day dependent on the number of days to become compliant.	\$0 - \$1000.00/day dependent on the number of days to become compliant.

<sup>1</sup> The amount includes the time required to develop an estimate of the projected income for the first two years of operation.

<sup>2</sup> The amount includes fees charges by a CPA.

<sup>3</sup> The amount includes time to develop an enrollment agreement and initial printing costs.

<sup>4</sup> The amount includes time to prepare a statement of charges for teach-out expenses but does not include the amount of the assessment that the Commission may order. The assessment amount will vary depending of the amount of funds available in the Tuition Trust Account, the number of school closures, amount of student refunds and amount of student teach-out charges paid from the account for a given year.

<sup>5</sup> The amount includes time to prepare and consider an agreement to hold a hearing at a later date.

<sup>6</sup> The amount includes time to travel to and attend the hearing.

<sup>7</sup> The amount includes preparation time and legal fees.

<sup>8</sup> The amount is dependant on actions taken by the school. It is impossible to calculate with any certainty the costs of paying student refunds and the loss of business revenue to the unlicensed school during the time period it takes the school to get its certificate of approval.

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Texas Health and Safety Code Settlement Notice

The State of Texas hereby gives notice of the proposed resolution of an environmental enforcement lawsuit brought pursuant to Chapter 341, Subchapter C, of the Texas Health and Safety Code and Chapter 26 of the Texas Water Code. The Attorney General will consider any written comments regarding the proposed agreed judgment.

Case Title and Court: *The State of Texas v. Lawrence "Larry" Phillips, individually and d/b/a Rainbow Lake Mobile Home Park*; Cause No. GV3-00001 in the 53rd Judicial District, Travis County, Texas.

Nature of Suit: This suit concerns a public drinking water system and a sewage collection and disposal system at the Rainbow Lake Mobile Home Park ("Rainbow Lake MHP") located in Liberty County. Rainbow Lake MHP consists of approximately 27 residences and sits on the bank of Whiskey Creek, approximately 2.5 miles north of the confluence of the Whiskey Creek and the East Fork of the San Jacinto River. Rainbow Lake MHP is owned and operated by Lawrence "Larry" Phillips.

Proposed Agreed Final Judgment and Permanent Injunction: The proposed Agreed Final Judgment and Permanent Injunction disposes of all parties and all claims in this cause. Defendant has agreed to pay the state \$22,000.00 in civil penalties and \$1,971.00 in administrative penalties. Further, Defendant has agreed to pay to the State Public Health Service Fees in the amount of \$331.08. Defendant has also agreed to pay \$10,000 in attorney's fees to the State and has agreed to pay all the court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Tracy J. Andrews, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication you may contact A. G. Younger, Agency Liaison at (512) 463-2110.

TRD-200400213

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: January 14, 2004

## Comptroller of Public Accounts

### Notice of Intent to Contract

Pursuant to Chapters 403, 2305, and Chapter 2254, Subchapter A, Texas Government Code, the Comptroller of Public Accounts (Comptroller) State Energy Conservation Office (SECO) announces its intent to enter into a contract for professional engineering services.

The contractor will provide on-site program monitoring of SECO contracts, as assigned. Contractor will monitor contracts to document the status of program issues such as the budget, program administration, schedules, deliverables and all other services reasonably related to program monitoring.

Unless a better offer is received, the contract is awarded to Kinsman & Associates Consulting Engineers, 1701 N. Greenville Avenue, Suite 600, Richardson, Texas 75801. The total amount of this contract is not to exceed \$20,000.00. The term of the contract is Upon Final Signature through August 31, 2004.

The project monitoring will be completed on or before August 31, 2004.

TRD-200400187

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: January 12, 2004

### Request for Proposals

Pursuant to Chapters 403, 2305; 2305.038; and Chapter 2254, Subchapter A, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces the issuance of its Request for Proposals (RFP #167i) for energy engineering services from qualified independent firms and qualified energy engineers, to provide energy engineering services for the Schools & Local Government Energy Program (Program). Successful Respondent(s) will be asked to assist Comptroller in performing energy engineering services and assist in conducting monitoring activities required by the Program. Successful Respondent(s) will be expected to begin performance of any contract(s) resulting from this RFP on or about March 1, 2004.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Friday, January 23, 2004, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also plans to place the RFP on the Texas Marketplace after Friday, January 23, 2004, 10:00 a.m. (CZT). All written inquiries and Non-Mandatory Letters of Intent must be received at the above-referenced address no later than 2:00 p.m. (CZT) on Friday, February 6, 2004. Non-Mandatory Letters of Intent must be addressed to Clay Harris, Assistant General Counsel, Contracts, and must be signed by an authorized representative of each entity. All responses to questions will be posted electronically on Tuesday, February 10, 2004, on the Texas Marketplace at: <http://www.esbd.tbpc.state.tx.us>. Prospective respondents are encouraged to fax the Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. Non-Mandatory Letters of Intent and Questions received after the deadline will not be considered.

Closing Date: Proposals must be received in the Assistant General Counsel, Contracts Office at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Tuesday, February 17, 2004. Proposals received after this time and proposals submitted by facsimile will not be considered; respondents shall be solely responsible for verifying timely receipt of proposals and all required copies in the Issuing Office by the deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - Friday, January 23, 2004, 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - Friday, February 6, 2004, 2:00 p.m. CZT; Posting of Official Responses to Questions - Tuesday, February 10, 2004; Proposals Due - Tuesday, February 17, 2004, 2:00 p.m. CZT; Contract Execution - March 1, 2004, or as soon thereafter as practical; Commencement of Project Activities - March 1, 2004, or as soon thereafter as practical.

TRD-200400225

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: January 14, 2004

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 01/19/04 - 01/25/04 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 01/19/04 - 01/25/04 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-200400196

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: January 13, 2004

## Texas Department of Criminal Justice

### Award Notification

The Texas Department of Criminal Justice publishes this notice of a contract award to Texas Liqua Tech Services, Inc., 1819 Milby, Houston, Texas 77003. Notice of an Invitation for Bid was published in the September 19, 2003, issue of the *Texas Register* (28 TexReg

8174). This contract was awarded in accordance with the requirements in Chapter 2254, Subchapter B, Texas Government Code.

The contract number is 696-FD-4-5-C0127 and the not-to-exceed contract amount is \$1,646,000.00.

TRD-200400163

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Filed: January 9, 2004

## Texas Education Agency

### Request for Applications Concerning 2004-2007 Improving Teaching and Learning - The Texas Title I Comprehensive School Reform Program

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-04-012 from local education agencies (LEAs) or shared services arrangements (SSAs) of LEAs and open-enrollment charter schools that receive funds under Title I, Part A. The grant funds shall be used to support comprehensive school reform in schools that are eligible for funds under Title I, Part A. The applicant LEA or open-enrollment charter school and each member district of an SSA must actually receive Title I, Part A funds for the 2004-2005 school year. Each individual campus for which the LEA is applying must be eligible to receive Title I, Part A funds in the 2004-2005 school year. One application per campus must be submitted. Current recipients of the Improving Teaching and Learning - Comprehensive School Reform Program and those campuses implementing comprehensive reform programs prior to school year 2004-2005 are not eligible to apply. Education service centers are eligible to apply as fiscal agents of an SSA of small schools serving a total of not more than 500 students in the SSA.

Description. The grant encourages schools to examine successful, externally-developed models for inclusion in their comprehensive school reform efforts - models that have well-researched and well-documented designs for schoolwide change and that have been replicated with proven results. Applicants are required to demonstrate in the application the implementation of 11 federal statutory program components, listed in P.L. 107-110, Title I, Part F, related to carrying out comprehensive school reform.

Dates of Project. The Improving Teaching and Learning - The Texas Title I Comprehensive School Reform Program will be implemented during the 2004-2005 through 2006-2007 school years. Applicants should plan for a starting date of no earlier than July 1, 2004, and an ending date of no later than June 30, 2007.

Funding Amount. Funding will be provided for approximately 187 projects. Applicants may apply for not less than \$50,000 and not more than \$150,000 for the 2004-2005 school year for each grant submitted on behalf of an individual campus. Applicants will apply for a three-year grant, with funding for the second and third years contingent upon satisfactory progress in the previous year and contingent upon appropriations by the U.S. Congress. This project is 100% federally funded. Funding has not yet been appropriated by the U.S. Congress; however, the Texas Education Agency has elected to solicit grant applications to enable projects to begin July 1, 2004, should funds be appropriated.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant

program and the extent to which the application addresses the primary objective, program goals, and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

**Requesting the Application.** A complete copy of RFA #701-04-012 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas, 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the Texas Education Agency website at <http://www.tea.state.tx.us/grant/announcements/grants2.cgi> for viewing and downloading.

**Further Information.** For clarifying information about the RFA, contact Sam Lester in the Division of No Child Left Behind Program Coordination, Texas Education Agency, (512) 463-9374.

**Deadline for Receipt of Applications.** Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Tuesday, March 16, 2004, to be considered for funding.

TRD-200400221

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: January 14, 2004

## **Texas Commission on Environmental Quality**

### **Notice of Deletion of Kingsbury Metal Finishing, Inc. Proposed State Superfund Site from the State Superfund Registry**

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this notice of deletion of the Kingsbury Metal Finishing, Inc. (the Site) from its proposed-for-listing status on the state Superfund registry. The state Superfund registry lists the contaminated sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The Site was originally proposed for listing on the state Superfund registry in the January 19, 2001 issue of the *Texas Register* (26 TexReg 844). The site, including all land, structures, appurtenances, and other improvements, is located approximately 1/2 mile south of the intersection of Farm-to-Market (FM) Road 1104 with US Highway 90, at 1720 FM 1104, approximately 3/4 mile southeast of Kingsbury in Guadalupe County, Texas. The site also included any areas where hazardous substances had come to be located as a result, directly or indirectly, of releases of hazardous substances from the site.

Kingsbury Metal Finishing Company was an electroplating facility that began business in May 1986. The facility included four primary

areas: the main processing building; the wastewater treatment area; the discharge area covered with fill; and the outdoor storage area. The main process building contained approximately 30 plating process tanks filled with mixed plating waste. The wastewater treatment area contained approximately seven tanks and 19 drums. The plating process tanks containing mixed plating waste, and wastewater treatment tanks and drums containing wastewater and sludge were removed by TCEQ.

As a result of the removal actions that have been performed at the site, the ED has determined that it no longer presents an imminent and substantial endangerment to public health and safety or the environment. Therefore, no further action is necessary at the site and the site is eligible for deletion from the state registry as provided by 30 TAC §335.344(c).

The site is appropriate for residential use according to 30 TAC Chapter 350, Texas Risk Reduction Program Rule.

In accordance with 30 TAC §335.344(b), the commission held a public meeting on December 11, 2003, at the Seguin City Hall Council Chambers, 205 North River, Seguin, Texas, to receive comments on the intended deletion of the Site. Comments which were received into the record were addressed at the public meeting by the commission. The complete public file, including a transcript of the public meeting, may be viewed during regular business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

All inquiries regarding the deletion of the site should be directed to Janie Montemayor, Community Relations, (800) 633-9363 or (512) 239-3844.

TRD-200400165

Paul Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 9, 2004

### **Notice of District Petition**

Notice mailed January 2, 2004.

Texas Commission on Environmental Quality Internal Control No. 12162003-D01; LM Land Holdings, LP and LM Development, LP (Petitioners) filed a petition for creation of Fort Bend County Municipal Utility District No. 146 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Washington Mutual Bank, F.A., on the property to be included in the proposed District, and Washington Mutual Bank, F.A. has consented to the petition; (3) the proposed District will contain approximately 395.36 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2003-985, effective October 28, 2003, the City of Houston, Texas gave its consent to the creation of the proposed District and authorized the Petitioners to initiate proceedings to create such political subdivision within its

jurisdiction. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$31,900,000.

#### INFORMATION SECTION

The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petitions unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200400224

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 14, 2004



#### Notice of Meeting on February 26, 2004 in Corpus Christi, Texas Concerning the Industrial Road/Industrial Metals Facility

The purpose of the meeting is to obtain public input and information concerning proposal of the facility to the state registry of Superfund sites and proposal of non-residential land use.

The Texas Commission on Environmental Quality (TCEQ or commission) is required under Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, as amended (the Act), to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the September 19, 2003 issue of the *Texas Register* (28 TexReg 8175).

In accordance with the Act, §361.184(a), the commission must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in

the county in which the facility is located. With this publication, the commission hereby gives notice of a facility that the executive director has determined eligible for listing, and which the executive director proposes to list on the state registry. By this publication, the commission also gives notice in accordance with the Act, §361.1855, that it proposes a land use other than residential as appropriate for the facility identified in this notice. The commission proposes a commercial/industrial land use designation. Determination of appropriate land use may impact the remedial investigation and remedial action for the site. The TCEQ is proposing a land use designation of commercial/industrial based on the existing land use of the property, as is prescribed in Texas Risk Reduction Program, 30 TAC §350.53, Land Use Classification.

This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. This notice of intent to list this facility was also published on January 23, 2004, in the *Corpus Christi Caller Times*.

The facility proposed for listing is the Industrial Road/Industrial Metals Site, located at 3000 Agnes, Corpus Christi, Nueces County, Texas. The geographic coordinates of the site are 27 degrees 47 minutes 13 seconds North, 97 degrees 25 minutes 28 seconds West. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System (HRS). The HRS is the principal screening guide used by the commission to evaluate potential, relative risk to public health and the environment from releases or threatened releases of hazardous substances. The site description may change as additional information is gathered on the sources and extent of contamination.

The Industrial Road/Industrial Metals Site consists of approximately eight acres of land located at 3000 Agnes Street, approximately 0.3 miles west of North Port Avenue in Corpus Christi, Nueces County, Texas. The northern portion of the site has been referred to as the Industrial Road tract and the southern portion as the Industrial Metals tract.

From 1937 to approximately 1980, the site was operated by various business entities including: General Export Iron and Metal; Metals, Inc.; Gulf Metals Industries, Inc.; Anglo Iron and Metal Company; Industrial Metal Trading Company; and Industrial Salvage Company. Operations at the site included the salvaging of scrap metal and electrical transformers and the cracking or shredding, acid neutralization, and salvaging of lead batteries.

From approximately 1981, various county, state, and federal government agencies have conducted, or required the owners to conduct, a number of inspections and sampling investigations resulting in the discovery of high concentrations of lead and Polychlorinated Biphenyls (PCBs) on the site. The site was referred to the Texas Office of the Attorney General for an enforcement action in 1981.

Under the oversight of the Texas Office of the Attorney General and the TCEQ (including predecessor agencies), on-site corrective actions were undertaken by certain parties including: removal of soils contaminated with lead and PCB above action levels, backfilling portions of the site and construction of a plastic and concrete cap on the Industrial Metals tract; and a clay cap on the Industrial Road tract. These actions were completed by September 1990.

In 1991 and 1999, the United States Environmental Protection Agency (EPA) collected soil samples from the neighborhood in the vicinity of the site. In November 2000, EPA notified the TCEQ that further response action would be the responsibility of TCEQ. In 2002 and 2003, the TCEQ removed contaminated soils from residential yards near the site.

The site was evaluated to be eligible for the state registry by the HRS based on soil exposure pathway. Because the site is eligible for listing on the state registry, a remedial investigation and feasibility study will be conducted to further evaluate the groundwater, surface water, and air exposure pathways which were not evaluated for the HRS.

A public meeting will be held February 26, 2004, at 7:00 p.m. at the Miller High School Cafetorium, 1 Battlin' Buc Boulevard, Corpus Christi, Texas. The purpose of this meeting is to obtain additional information regarding the site relative to its eligibility for listing on the state registry, identify additional potentially responsible parties, and obtain public input and information regarding the appropriate use of land on which the facility is located. The public meeting will be legislative in nature and not a contested case hearing under the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted **prior** to the public meeting must be received by 5:00 p.m., February 26, 2004, **and should be sent in writing** to Mr. Jeffrey E. Patterson, Project Manager, Texas Commission on Environmental Quality, Remediation Division, MC 143, P. O. Box 13087, Austin, Texas 78711-3087 or facsimile (512) 239-2450. The public comment period for this action will end at the close of the public meeting on February 26, 2004.

A portion of the record for this site, including documents pertinent to the executive director's determination of eligibility, is available for review at the Corpus Christi Central Library, 805 Comanche, (361) 880-7000, during regular business hours. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas, (800) 633- 9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Information is also available regarding the state Superfund program on the TCEQ Web site located at [www.tnrc.state.tx.us/permitting/remed/superfund/index.html](http://www.tnrc.state.tx.us/permitting/remed/superfund/index.html).

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-2463. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call Mr. John Flores, TCEQ Community Relations, at (800) 633-9363, extension 5674.

TRD-200400199

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 13, 2004



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a

hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director (ED) of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 23, 2004**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 23, 2004**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DO and/or the comment procedure at the listed phone numbers; however, comments on the DO should be submitted to the commission in **writing**.

(1) COMPANY: The Revocation of Cicero Patton's Class C Wastewater License and Class C Groundwater License; DOCKET NUMBER: 2003-0652-WOC-E; TCEQ ID NUMBER: 453-82- 6777; LOCATION: 140 West Clark, Post Office Drawer H, Bartlett, Williamson, and Bell County, Texas; TYPE OF FACILITY: City of Bartlett's groundwater facility located in Williamson County and City of Bartlett's wastewater facility located in Bell County; RULES VIOLATED: 30 TAC §30.33(c) and TWC, §7.303(b)(2), by committing fraud or deceit in obtaining his Class C Wastewater and Class C Groundwater licenses; PENALTY: \$0; revocation of license; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339- 2929 and Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200400211

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 13, 2004



#### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 23, 2004**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts



or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 23, 2004**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Panjwani Enterprises, Inc. dba Conoco Truck Stop; DOCKET NUMBER: 2002-0454-PST-E; TCEQ ID NUMBER: 0000939; LOCATION: 8901 South Interstate Highway 45, Conroe, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A) and TWC, §26.3475, by failing to provide release detection for diesel tanks; and 30 TAC §334.48(c) and §334.50(d)(1)(B)(ii), by failing to reconcile inventory control records for diesel tanks on a monthly basis and failing to conduct proper automatic inventory control procedures for those tanks; PENALTY: \$10,000; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Uppal Brothers, Inc. dba Save Way Food Mart; DOCKET NUMBER: 2002- 0860-PST-E; TCEQ ID NUMBER: 44704; LOCATION: 6620 Brentwood Stair, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(3)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain all components of the Stage II vapor recovery system in proper operating condition; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post clear and legible operating instructions and related information on gasoline pumps equipped with a Stage II vapor recovery system; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to perform an annual pressure decay test within the preceding 12-month period; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to successfully perform the five-year full system functional testing to verify proper operation of the Stage II vapor recovery system; and 30 TAC §334.22(a), by failing to pay outstanding underground storage tank fees; PENALTY: \$6,250; STAFF ATTORNEY: Diana Grawitch, Litigation Division, MC 175, (512) 239-0939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200400210

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 13, 2004

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**Texas Department of Health**

## Annual Republication of the Texas Schedules of Controlled Substances

PURSUANT TO THE TEXAS CONTROLLED SUBSTANCES ACT, HEALTH AND SAFETY CODE, CHAPTER 481, THESE SCHEDULES, ESTABLISHED JANUARY 1, 2004, SUPERCEDE PREVIOUS SCHEDULES AND CONTAIN THE MOST CURRENT VERSION OF THE SCHEDULES OF ALL CONTROLLED SUBSTANCES FROM THE PREVIOUS SCHEDULES AND MODIFICATIONS. THESE SCHEDULES HAVE BEEN SIGNED BY DR. EDUARDO SANCHEZ, COMMISSIONER OF HEALTH, AND WILL BE EFFECTIVE 21 DAYS AFTER PUBLICATION OF THIS NOTICE IN THE TEXAS REGISTER.

January 1, 2004

Changes to the schedules are designated by an asterisk (\*). Additional information can be obtained by contacting the Texas Department of Health, Bureau of Food and Drug Safety, 1100 West 49th Street, Austin, Texas 78756. The telephone number is (512) 719-0237 and the website address is .

### SCHEDULES

Nomenclature: Controlled substances listed in these schedules are included by whatever official, common, usual, chemical, or trade name they may be designated.

#### SCHEDULE I

Schedule I consists of:

Schedule I opiates

the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)- N- phenylacetamide);
- (2) Allylprodine;
- (3) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
- (4) Alpha-methylfentanyl or any other derivative of Fentanyl;
- (5) Alpha-methylthiofentanyl (N-(1-methyl-2-(2-thienyl) ethyl-4-piperidinyl)-N- phenyl-propanamide);
- (6) Benzethidine;
- (7) Beta-hydroxyfentanyl (N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenyl-propanamide);
- (8) Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl- 4- piperidinyl)-N- phenylpropanamide);
- (9) Betaprodine;
- (10) Clonitazene;
- (11) Diampromide;
- (12) Diethylthiambutene;
- (13) Difenoxin;
- (14) Dimenoxadol;
- (15) Dimethylthiambutene;
- (16) Dioxaphetyl butyrate;
- (17) Dipipanone;

- (18) Ethylmethylthiambutene;
- (19) Etonitazene;
- (20) Etoxeridine;
- (21) Furethidine;
- (22) Hydroxypethidine;
- (23) Ketobemidone;
- (24) Levophenacylmorphan;
- (25) Meprodine;
- (26) Methadol;
- (27) 3-methylfentanyl (N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N- phenylpropanamide), its optical and geometric isomers;
- (28) 3-methylthiofentanyl (N-(3-methyl-1-(2-thienyl)ethyl-4-piperidiny)-N- phenylpropanamide);
- (29) Moramide;
- (30) Morpheridine;
- (31) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (32) Noracymethadol;
- (33) Norlevorphanol;
- (34) Normethadone;
- (35) Norpipanone;
- (36) Para-fluorofentanyl (N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidiny)- propanamide);
- (37) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (38) Phenadoxone;
- (39) Phenampromide;
- (40) Phencyclidine;
- (41) Phenomorphan;
- (42) Phenoperidine;
- (43) Piritramide;
- (44) Proheptazine;
- (45) Properidine;
- (46) Propiram;
- (47) Thiofentanyl (N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidiny)-propanamide);
- (48) Tilidine; and
- (49) Trimeperidine;

#### Schedule I opium derivatives

the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;

- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphenol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Monoacetylmorphine;
- (16) Morphine methylbromide;
- (17) Morphine methylsulfonate;
- (18) Morphine-N-Oxide;
- (19) Myrophine;
- (20) Nicocodeine;
- (21) Nicomorphine;
- (22) Normorphine;
- (23) Pholcodine; and
- (24) Thebacon;

#### Schedule I hallucinogenic substances

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

- (1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; AET);
- \*(2) alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;
- (3) 4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5- dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA);
- (4) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB);
- (5) 2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy- alpha-methylphenethylamine; 2,5-DMA);
- (6) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);
- (7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers;
- \*(8) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;
- (9) 5-methoxy-3,4-methylenedioxy-amphetamine;

(10) 4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(11) 1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);

(12) 4-methyl-2,5-dimethoxyamphetamine (some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methyl-phenethylamine; "DOM"; and "STP");

(13) 3,4-methylenedioxy-amphetamine;

(14) 3,4-methylenedioxy-methamphetamine (MDMA, MDM);

(15) 3,4-methylenedioxy-N-ethylamphetamine (some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);

(16) 3,4,5-trimethoxy amphetamine;

(17) N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

(18) Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy- N,N-dimethyltryptamine; map-pine);

(19) Diethyltryptamine (some trade and other names: N,N-Diethyl-tryptamine; DET);

(20) Dimethyltryptamine (some trade and other names: DMT);

(21) Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1- phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)-ethylamine; cyclohexamine; PCE);

(22) Ibogaine (some trade or other names: 7-Ethyl-6,6-beta, 7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5H-pyrido[1',2':1,2] azepino [5,4-b] indole; taber-nanthe iboga);

(23) Lysergic acid diethylamide;

(24) Marihuana;

(25) Mescaline;

(26) N-ethyl-3-piperidyl benzilate;

(27) N-methyl-3-piperidyl benzilate;

(28) Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo (b,d) pyran; Synhexyl);

(29) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(30) Psilocybin;

(31) Psilocin;

(32) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1-phenyl- cyclohexyl)-pyrrolidine, PCPy, PHP);

\*(33) Tetrahydrocannabinols

Meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extracts of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers

6 cis or trans tetrahydrocannabinol, and their optical isomers

3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.);

(34) Thiophene analog of phencyclidine (some trade or other names: 1-(1-(2-thienyl) cyclohexyl) piperidine; 2-thienyl analog of phencyclidine; TPCP);

(35) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine (some trade or other names: TCPy); and,

(36) 1-(3-trifluoromethylphenyl) piperazine (other names:TFMPP), its optical isomers, salts and salts of isomers.

#### Schedule I stimulants

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro- 5-phenyl-2-oxazolamine);

(2) Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone; alpha- aminopropiophenone; 2-aminopropiophenone and norephedrone);

(3) Fenethylamine;

(4) Methcathinone (some other names: 2-(methylamino)-propiophenone; alpha- (methylamino) propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432);

(5) 4-methylaminorex;

(6) N-ethylamphetamine; and

(7) N,N-dimethylamphetamine (some other names: N,N-alpha-trimethylbenzene- ethaneamine; N,N-alpha-trimethylphenethylamine).

#### Schedule I depressants

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate)

(2) Mecloqualone; and

(3) Methaqualone.

#### SCHEDULE II

Schedule II consists of:

Schedule II substances, vegetable origin or chemical synthesis

the following substances, however produced, except those narcotic drugs listed in other schedules:

(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naloxone and its salts, naltrexone and its salts, and nalmefene and its salts, but including:

- (1-1) Codeine;
- (1-2) Dihydroetorphine;
- (1-3) Ethylmorphine;
- (1-4) Etorphine hydrochloride;
- (1-5) Granulated opium;
- (1-6) Hydrocodone;
- (1-7) Hydromorphone;
- (1-8) Metopon;
- (1-9) Morphine;
- (1-10) Opium extracts;
- (1-11) Opium fluid extracts;
- (1-12) Oxycodone;
- (1-13) Oxymorphone;
- (1-14) Powdered opium;
- (1-15) Raw opium;
- (1-16) Thebaine; and
- (1-17) Tincture of opium;

(2) a salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including:

(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers; and

(4-2) coca leaves and a salt, compound, derivative, or preparation of coca leaves that is chemically equivalent or identical to a substance described by this paragraph, other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; and,

(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy;

#### Opiates

the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Carfentanil;
- (6) Dextropropoxyphene, bulk (nondosage form);
- (7) Dihydrocodeine;
- (8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

(11) Levo-alphaacetylmethadol (some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(17) Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;

(18) Pethidine (meperidine);

(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Racemorphan;

(26) Remifentanil; and

(27) Sufentanil;

#### Schedule II stimulants

unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, §481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;

(3) Methylphenidate and its salts; and

(4) Phenmetrazine and its salts;

#### Schedule II depressants

unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital; and

(4) Secobarbital;

#### Schedule II hallucinogenic substances

Nabilone (Another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8, 10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one);

#### Schedule II precursors

unless specifically excepted or listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances:

(1) Immediate precursor to methamphetamine:

(1-1) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;

(2) Immediate precursor to amphetamine and methamphetamine:

(2-1) Phenylacetone (some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone); and

(3) Immediate precursors to phencyclidine (PCP):

(3-1) 1-phenylcyclohexylamine; and

(3-2) 1-piperidinocyclohexanecarbonitrile (PCC).

### SCHEDULE III

Schedule III consists of:

#### Schedule III depressants

unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredients that are not listed in a schedule;

(2) a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any of their salts and approved by the Food and Drug Administration for marketing only as a suppository;

(3) a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules;

(4) Chlorhexadol;

(5) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under §505 of the Federal Food Drug and Cosmetic Act:

(6) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(7) Lysergic acid;

(8) Lysergic acid amide;

(9) Methypylon;

(10) Sulfondiethylmethane;

(11) Sulfonethylmethane;

(12) Sulfonmethane; and

(13) Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names

for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethyl-pyrazolo-(3,4-e)(1,4)-diazepin- 7(1H)-one, flupyrzapon;

#### Nalorphine

#### Schedule III narcotics

unless specifically excepted or unless listed in another schedule:

(1) a material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts:

(1-1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(1-2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-3) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(1-4) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-5) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-6) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(1-7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and,

(1-8) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(2) any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:

(2-1) Buprenorphine

#### Schedule III stimulants

unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

#### Schedule III anabolic steroids and hormones

anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promote muscle growth, and include the following:

- (1) Boldenone;
- (2) Chlorotestosterone (4-chlortestosterone);
- (3) Clostebol;
- (4) Dehydrochlormethyltestosterone;
- (5) Dihydrotestosterone (4-dihydrotestosterone);
- (6) Drostanolone;
- (7) Ethylestrenol;
- (8) Fluoxymesterone;
- (9) Formebolone;
- (10) Mesterolone;
- (11) Methandienone;
- (12) Methandranone;
- (13) Methandriol;
- (14) Methandrostenolone;
- (15) Methenolone;
- (16) Methyltestosterone;
- (17) Mibolerone;
- (18) Nandrolone;
- (19) Norethandrolone;
- (20) Oxandrolone;
- (21) Oxymesterone;
- (22) Oxymetholone;
- (23) Stanolone;
- (24) Stanozolol;
- (25) Testolactone;
- (26) Testosterone; and
- (27) Trenbolone.

#### Schedule III hallucinogenic substances

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-tri-methyl-3-pentyl-6H-dibenzo(b,d)pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol).

#### **SCHEDULE IV**

Schedule IV consists of:

##### Schedule IV depressants

except as provided by the Texas Controlled Substances Act, Health and Safety Code, §481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Alprazolam;
- (2) Barbitol;

- (3) Bromazepam;
- (4) Camazepam;
- (5) Chloral betaine;
- (6) Chloral hydrate;
- (7) Chlordiazepoxide;
- (8) Clobazam;
- (9) Clonazepam;
- (10) Clorazepate;
- (11) Clotiazepam;
- (12) Cloxazolam;
- (13) Delorazepam;
- (14) Diazepam
- (15) Dichloralphenazone;
- (16) Estazolam;
- (17) Ethchlorvynol;
- (18) Ethinamate;
- (19) Ethyl loflazepate;
- (20) Fludiazepam;
- (21) Flunitrazepam;
- (22) Flurazepam;
- (23) Halazepam;
- (24) Haloxazolam;
- (25) Ketazolam;
- (26) Loprazolam;
- (27) Lorazepam;
- (28) Lormetazepam;
- (29) Mebutamate;
- (30) Medazepam;
- (31) Meprobamate;
- (32) Methohexital;
- (33) Methylphenobarbital (mephobarbital);
- (34) Midazolam;
- (35) Nimetazepam;
- (36) Nitrazepam;
- (37) Nordiazepam;
- (38) Oxazepam;
- (39) Oxazolam;
- (40) Paraldehyde;
- (41) Petrichloral;
- (42) Phenobarbital;
- (43) Pinazepam;
- (44) Prazepam;
- (45) Quazepam;

- (46) Temazepam;
- (47) Tetrazepam;
- (48) Triazolam;
- (49) Zaleplon: and
- (50) Zolpidem;

#### Schedule IV stimulants

unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Cathine ((+)-norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenfluramine;
- (5) Fenproporex;
- (6) Mazindol;
- (7) Mefenorex;
- (8) Modafinil;
- (9) Pemoline (including organometallic complexes and their chelates);
- (10) Phentermine;
- (11) Pipradrol;
- (12) SPA ((-)-1-dimethylamino-1,2-diphenylethane); and
- (13) Sibutramine

#### Schedule IV narcotics

unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs or their salts:

- (1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and
- (2) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

#### Schedule IV other substances

unless specifically excepted or unless listed in another schedule, a material, compound, substance's salts:

- (1) Butorphanol, including its optical isomers; and
- (2) Pentazocine, its salts, derivatives, compounds, or mixtures.

### SCHEDULE V

Schedule V consists of:

Schedule V narcotics containing non-narcotic active medicinal ingredients

a compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more non-narcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
- (2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
- (3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- (5) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and
- (6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

#### Schedule V stimulants

unless specifically exempted or excluded or unless listed in another schedule, a compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

Pyrovalerone.

TRD-200400201

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: January 13, 2004



Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Raba-Kistner Consultants, Inc.

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Raba-Kistner Consultants, Inc., (licensee-L01571) of San Antonio. A total penalty of \$12,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200400222

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: January 14, 2004



Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation to Robert W. Buchanan, D.C., dba 34th Street Chiropractic

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Robert W. Buchanan, D.C., doing business as 34th Street Chiropractic (registrant-R20355) of Lubbock. A total penalty of \$9,000 is proposed

to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200400202  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: January 13, 2004



#### Notice of Public Meetings Concerning the Proposed Health and Human Services Department Organizational Structure

**Purpose.** The Texas Health and Human Services Commission will conduct a series of public meetings to receive public comment on the proposed organizational structures of state health and human services departments created under House Bill No. 2292, 78th Legislature. The newly created departments are the Department of Family and Protective Services, Department of Assistive and Rehabilitative Services, Department of Aging and Disability Services, Department of State Health Services. The Health and Human Services Commission, in conjunction with current health and human services agencies, is developing proposed organizational structures for each new department. Copies of the proposed organizational structure for each new department will be posted on the Health and Human Services Commission's web site at [http://www.hhsc.state.tx.us/Consolidation/Consl\\_home.html](http://www.hhsc.state.tx.us/Consolidation/Consl_home.html) once available.

The Department of Aging and Disability Services and the Department of State Health Services will hold joint public meetings on the following dates, times, and locations:

**Agenda.** The agenda for each public meeting is as follows: Welcome and Introduction; Overview of proposed agency organizational structure; Public comment and testimony. (Oral comments are limited to three minutes.)

Date: January 29, 2004

Agency and Time: Department of Aging and Disability Services, 3:00 p.m. to 5:00 p.m.

Agency and Time: Department of State Health Services, 5:00 p.m. to 7:00 p.m.

Additional comment time if needed for either agency: 7:00 p.m. to 8:00 p.m.

Location: Valley Baptist Medical Center, Woodward Conference Room, 2101 Pease Street, Harlingen, Texas

Contact: Carol Cornelison, (956) 423-0130, [Carol.Cornelison@hhsc.state.tx.us](mailto:Carol.Cornelison@hhsc.state.tx.us)

Date: January 30, 2004

Agency and Time: Department of Aging and Disability Services, 3:00 p.m. to 5:00 p.m.

Agency and Time: Department of State Health Services, 5:00 p.m. to 7:00 p.m.

Additional comment time if needed for either agency: 7:00 p.m. to 8:00 p.m.

Location: Bob Duncan Community Center, 2800 South Center Street (inside Vandergriff Park), Arlington, Texas

Contact: Jan Havins, (817) 264-4503, [Jan.Havins@tdh.state.tx.us](mailto:Jan.Havins@tdh.state.tx.us)

Date: February 3, 2004

Agency and Time: Department of Aging and Disability Services, 1:00 p.m. to 3:00 p.m.

Agency and Time: Department of State Health Services, 3:00 p.m. to 5:00 p.m.

Additional comment time if needed for either agency: 5:00 p.m. to 7:00 p.m.

Location: Texas Department of Human Services, Winters Building, Board Room, 701 West 51st Street, Austin, Texas

Contact: Barrett Markland, (512) 438-5419, [Barrett.Markland@dhs.state.tx.us](mailto:Barrett.Markland@dhs.state.tx.us)

Date: February 4, 2004

Agency and Time: Department of Aging and Disability Services, 3:00 p.m. to 5:00 p.m.

Agency and Time: Department of State Health Services, 5:00 p.m. to 7:00 p.m.

Additional comment time if needed for either agency: 7:00 p.m. to 8:00 p.m.

Location: Texas Medical Center, Hornberger Conference Center, 2151 W. Holcombe Blvd., Houston, Texas

Contact: Greta Etnyre, (713) 767-3019, [Greta.Etnyre@tdh.state.tx.us](mailto:Greta.Etnyre@tdh.state.tx.us)

Date: February 5, 2004

Agency and Time: Department of Aging and Disability Services, 3:00 p.m. to 5:00 p.m.

Agency and Time: Department of State Health Services, 5:00 p.m. to 7:00 p.m.

Additional comment time if needed for either agency: 7:00 p.m. to 8:00 p.m.

Location: El Paso Community College, Administrative Building, 9050 Viscount Blvd., El Paso, Texas

Contact: Kaye Moore (915) 834-7752, [Kaye.Moore@hhsc.state.tx.us](mailto:Kaye.Moore@hhsc.state.tx.us)

**Comments.** The public is invited to submit written comments regarding the proposed organizational structures for the new departments until 5:00 p.m. the day of the meeting. Written comments may be delivered by U.S. mail or express delivery to the attention of the Program Management Office, Health and Human Services Commission, P. O. Box 13247, Austin, Texas 78711. Hand deliveries will be accepted at 4900 North Lamar Boulevard, Fourth Floor, Austin, Texas 78751. Alternatively, written comments may be delivered via facsimile at (512) 424-6974.

For ADA assistance, please contact Redge Westbrook, Office of Civil Rights, (512) 458-7627, toll free (888) 388-6332, or TDD (877) 432-7232, at least four days prior to the meeting.

TRD-200400239

Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: January 14, 2004





## Texas Health and Human Services Commission

### Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 10, 2004, to receive public comment on proposed payment rates for the Residential Care (RC) Program. This program is operated by the Texas Department of Human Services (DHS). These payment rates are proposed to be effective March 1, 2004. The hearing will be held in compliance with Title 40 of the Texas Administrative Code (TAC) §20.105(g), which requires public hearings on proposed payment rates. The public hearing will be held on February 10, 2004, at 9:00 a.m. in the Public Hearing Room of the Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. The hearing may conclude as early as 9:15 a.m. if no commenters have appeared by that time. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Mr. Arreola, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 491-1998. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101, telephone number (512) 491-1358.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101, telephone number (512) 491-1358, by February 4, 2004, so that appropriate arrangements can be made.

Proposal. The proposed payment rates adjust for the increase in the Supplemental Security Income (SSI) Federal Benefit Rate, which clients began receiving effective January 1, 2004. The effect of this proposal is that the clients will use the increase in their SSI Federal Benefit Rate amount to increase their room-and-board payment, thereby covering a greater share of the rate and reducing the DHS share of the rate. The total payment to the provider of service will not change and there are no adjustments to the rates due to inflation.

Methodology and justification. The proposed rates were determined in accordance with the rate reimbursement setting methodology at 40 TAC §46.27(c) for the RC Program.

TRD-200400198

Steve Aragón

General Counsel

Texas Health and Human Services Commission

Filed: January 13, 2004

## Texas Higher Education Coordinating Board

### GO Center Project: RFP for First Generation College Student Involvement - Request for Grant Proposals

The College for Texans Campaign of the Texas Higher Education Coordinating Board (THECB) and the College for All Texans Foundation: Closing the Gaps ("foundation") invite institutions of higher education, as defined in Texas Education Code, Section 61.003(8), and private or independent institutions of higher education, as defined in Texas Education Code, Section 61.003(15), all hereinafter referred to as "grantee" or "grantees," to participate in the campaign's GO Center project.

The College for Texans Campaign resulted from Senate Bill 573 (passed in the 77th legislative session of 2001, and codified in the Texas Education Code, at Section 61.951). Senate Bill 573 requires that THECB administer a statewide campaign to assure that parents and students understand the importance of higher education and how to prepare for it academically and financially. The campaign is one of the major strategies of Texas' education plan called Closing the Gaps by 2015. The goal of the campaign is to bring into higher education by 2015 an additional 300,000 people prepared to succeed who are not expected, based on current enrollment trends, to enroll in a Texas college or university. Visit [www.Education-GoGetIt.com](http://www.Education-GoGetIt.com) to learn more about the campaign. The College for All Texans Foundation: Closing the Gaps is a private nonprofit foundation established by Coordinating Board members with the mission of financially supporting the College for Texans Campaign.

### GO CENTER PROJECT

In the summer of 2003, the College for Texans Campaign partnered with several higher education institutions, public schools, Texas Campus Compact, Tech Prep, GEAR-UP, LULAC, VISTA, ENLACE, Communities-in-Schools, and other organizations to launch 40 high school GO Centers (see [www.gocenter.info](http://www.gocenter.info)).

GO Centers are located in high schools; however, institutions of higher education and college students play an important role in the project. The purpose of the GO Center project is to create a statewide network of trained college students and college-bound high school students, called the G-Force, who mentor middle and high school students to develop and follow a personal high school graduation and higher education plan.

THECB has issued a Request for Grant Proposals for the GO Center project. Funds will be designated to support college student participation in the GO Center project through scholarships for G-Force members, work-study matching funds and other funding mechanisms available to grantees. Go to [www.gocenter.info](http://www.gocenter.info) for a copy of a Request for Grant Proposals or call 512-427-6271.

TRD-200400171

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Filed: January 9, 2004

2nd Call: Request for Proposals (RFP) 2004-2005 Teacher Quality Grants - Type A, Under Title II - Part A, Teacher Quality Grants, of the No Child Left Behind Act of 2001 (P.L. 107-110)

Approximately \$3.6 million will be available in Type A grants to support the development of uniform teacher training modules in mathematics and science for teachers of grades 6 - 12, during 2004-2005. This is the second request for a proposal for a high school Chemistry module, to be funded with up to \$300,000 under a Teacher Quality - Type A Grant award.

Funds will be competitively distributed in Texas through the Teacher Quality Grants Program, and through joint efforts of the Texas Higher Education Coordinating Board and the Texas Education Agency. The Teacher Quality Grants Program was most recently reauthorized in 2001 as Title II - Part A of the NO CHILD LEFT BEHIND ACT. Proposals for funding in this second call for a Chemistry proposal under Type A awards must be submitted by January 24, 2004 to the Texas Higher Education Coordinating Board. Applications for Type A awards are available currently on the website of the Coordinating

Board; proposals for a Chemistry Type A award must adhere to the timeline for completion of work, as described in the current RFP.

The Teacher Quality Grants - Type A are designed to support the development and implementation of 12 uniform and comprehensive teacher training modules which are aligned with the Texas Essential Knowledge and Skills and can be used for professional development of teachers of grades 6 - 12. The 12 modules include: Middle School Math, Part I; Middle School Math, Part II; Middle School Science, Part I; Middle School Science, Part II; Algebra I; Geometry; Algebra II; Pre-calculus; Biology; Chemistry; Physics; and Integrated Physics and Chemistry (IPC). Twelve grants awards of up to \$300,000 each will be made to support the development of these modules. The development of the modules must include collaborative efforts between higher education institutions and local school districts in the areas of mathematics and science. Teacher Quality -Type B grants will be awarded for 2004 - 2005 to support the use of the uniform teacher training modules in summer institutes around the state (and for academic year follow-up) for teachers of math and science grades 6 - 12. The RFP for Teacher Quality- Type B grants of up to \$80,000 each is available on the Coordinating Board website, and has a closing date of February 6, 2004.

Notification to the successful applicant for the Chemistry Teacher Quality - Type A Grant Award will be given as soon after January 24, 2004 as possible. Projects funded under Type A applications are for up to 12 months. The Board will approve recommendation for 2004-2005 Type B awards at its April 24-25, 2004 meeting. Projects funded under Type B applications are for up to 17 months.

All public and private colleges and universities and non-profit organizations of proven effectiveness in educating secondary mathematics and science teachers are eligible to apply for Type A and Type B grants under the Teacher Quality Grants Program. For information, contact the Teacher Quality Grants office at (512) 427-6318.

TRD-200400172

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Filed: January 12, 2004

## **Texas Department of Housing and Community Affairs**

### **Notice of Public Hearing**

#### **Multifamily Housing Revenue Bonds (Western Hills Apartments) Series 2004**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Glenn Elementary School, 2385 Horal, San Antonio, Texas 75227, at 6:30 p.m. on February 10, 2004 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$4,400,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to AAMHA Western Hills, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring and rehabilitating a multifamily housing development (the "Development") described as follows: 149-unit multifamily residential rental development to be located on the west side of Loop 410 and to the north of US Highway 90, at 500 Tomar Drive, San Antonio, Bexar County, Texas 78227. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or [robbye.meyer@tdhca.state.tx.us](mailto:robbye.meyer@tdhca.state.tx.us).

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200400122

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 8, 2004

## **Texas Department of Human Services**

### **Notice of Public Meeting - Proposed Health and Human Services Department Organizational Structure**

Purpose. The Texas Health and Human Services Commission will conduct a series of public meetings to receive public comment on the proposed organizational structures of state health and human services departments created under House Bill No. 2292, 78th Legislature. The newly created departments are the Department of Family and Protective Services, Department of Assistive and Rehabilitative Services, Department of Aging and Disability Services, Department of State Health Services. The Health and Human Services Commission, in conjunction with current health and human services agencies, is developing proposed organizational structures for each new department. Copies of the proposed organizational structure for each new department will be posted on the Health and Human Services Commission's web site at [http://www.hhsc.state.tx.us/Consolidation/Consl\\_home.html](http://www.hhsc.state.tx.us/Consolidation/Consl_home.html) once available.

The Department of State Health Services and the Department of Aging and Disability Services will hold joint public meetings on the following dates, times, and locations:

Agenda. The agenda for each public meeting is as follows: Welcome and Introduction; Overview of proposed agency organizational structure; Public comment and testimony. (Oral comments are limited to three minutes.)

Date: January 29, 2004

Agency and Time: Department of Aging and Disability Services, 3:00 p.m. to 5:00 p.m.

Agency and Time: Department of State Health Services, 5:00 p.m. to 7:00 p.m.

Additional comment time if needed for either agency: 7:00 p.m. to 8:00 p.m.

Location: Valley Baptist Medical Center, Woodward Conference Room, 2101 Pease Street, Harlingen, Texas

Contact: Carol Cornelison, (956) 423-0130, Carol.Cornelison@hhsc.state.tx.us

Date: January 30, 2004

Agency and Time: Department of Aging and Disability Services, 3:00 p.m. to 5:00 p.m.

Agency and Time: Department of State Health Services, 5:00 p.m. to 7:00 p.m.

Additional comment time if needed for either agency: 7:00 p.m. to 8:00 p.m.

Location: Bob Duncan Community Center, 2800 South Center Street (inside Vandergriff Park), Arlington, Texas

Contact: Jan Havins, (817) 264-4503, Jan.Havins@tdh.state.tx.us

Date: February 3, 2004

Agency and Time: Department of Aging and Disability Services, 1:00 p.m. to 3:00 p.m.

Agency and Time: Department of State Health Services, 3:00 p.m. to 5:00 p.m.

Additional comment time if needed for either agency: 5:00 p.m. to 7:00 p.m.

Location: Texas Department of Human Services, Winters Building, Board Room, 701 West 51st Street, Austin, Texas

Contact: Barrett Markland, (512) 438-5419, Barrett.Markland@dhs.state.tx.us

Date: February 4, 2004

Agency and Time: Department of Aging and Disability Services, 3:00 p.m. to 5:00 p.m.

Agency and Time: Department of State Health Services, 5:00 p.m. to 7:00 p.m.

Additional comment time if needed for either agency: 7:00 p.m. to 8:00 p.m.

Location: Texas Medical Center, Hornberger Conference Center, 2151 W. Holcombe Blvd., Houston, Texas

Contact: Greta Etnyre, (713) 767-3019, Greta.Etnyre@tdh.state.tx.us

Date: February 5, 2004

Agency and Time: Department of Aging and Disability Services, 3:00 p.m. to 5:00 p.m.

Agency and Time: Department of State Health Services, 5:00 p.m. to 7:00 p.m.

Additional comment time if needed for either agency: 7:00 p.m. to 8:00 p.m.

Location: El Paso Community College, Administrative Building, 9050 Viscount Blvd., El Paso, Texas

Contact: Kaye Moore, (915) 834-7752, Kaye.Moore@hhsc.state.tx.us

Comments. The public is invited to submit written comments regarding the proposed organizational structures for the new departments until 5:00 p.m. the day of the meeting. Written comments may be delivered by U.S. mail or express delivery to the attention of the Program Management Office, Health and Human Services Commission, P. O. Box 13247, Austin, Texas 78711. Hand deliveries will be accepted at 4900 North Lamar Boulevard, Fourth Floor, Austin, Texas 78751. Alternatively, written comments may be delivered via facsimile at (512) 424-6974.

Persons with disabilities planning to attend a meeting who need auxiliary aids or services should call Redge Westbrook at (512) 458-7627 or (888) 388-6332 or T.D.D. at (512) 458-7708 no later than two days prior to the meeting date so that appropriate arrangements can be made.

TRD-200400240

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Filed: January 14, 2004



## Open Solicitation #2 for Reagan County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 Texas Administrative Code (TAC) §19.2324, the Texas Department of Human Services (DHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Reagan County, County #192**. Medicaid nursing facility occupancy rates in **Reagan County** exceeded the 90% occupancy threshold for six consecutive months during the period of **June 2003 through November 2003**. The county occupancy rates for each month of that period were: **93.0%, 92.4%, 90.5%, 94.9%, 92.4%, 91.7%**. In accordance with secondary selection process requirements contained in 40 TAC §19.2324(c), DHS will allocate up to **90** Medicaid beds to an eligible applicant that desires to construct a new nursing facility or to construct an addition to an existing nursing facility. Applicants for additional Medicaid beds must demonstrate a history of quality care as specified in 40 TAC §19.2322(e). Applicants must submit a written reply as described in 40 TAC §19.2324(c)(4) to Joe D. Armstrong, Texas Department of Human Services, Contract and Licensure Section, Long Term Care-Regulatory, Mail Code E-342, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by DHS before the close of business February 23, 2004, the published ending date of the open solicitation period. If one or more applicants are eligible for additional Medicaid beds, DHS will allocate Medicaid beds in accordance with 40 TAC §19.2324(c)(5). If no application for the secondary waiver process is received or if no applicant meets the requirements in this section, no further solicitation will occur.

TRD-200400203

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Filed: January 13, 2004



## Texas Department of Insurance

### Company Licensing

Application for admission to the State of Texas by NAFTA INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in McAllen, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200400214

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: January 14, 2004



## Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Kemper Independence Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting flex percentages +.77 to +2.57 by coverage, classification, territory. The overall rate change is -2.5%.

Copies of the filing may be obtained by contacting the Texas Department of Insurance, P&C Actuarial Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-3017.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by February 6, 2004.

TRD-200400227

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: January 14, 2004



## Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Unitrin Auto and Home Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting flex percentages +1.12 to +3.88 by coverage, classification, territory. The overall rate change is +5.5%.

Copies of the filing may be obtained by contacting the Texas Department of Insurance, P&C Actuarial Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-3017.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by February 6, 2004.

TRD-200400228

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: January 14, 2004



## Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Unitrin Preferred Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting flex percentages +0.96 to +3.03 by coverage, classification, territory. The overall rate change is +10.7%.

Copies of the filing may be obtained by contacting the Texas Department of Insurance, P&C Actuarial Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-3017.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by February 6, 2004.

TRD-200400229

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: January 14, 2004



## Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of AVESIS THIRD PARTY ADMINISTRATORS, INC., a foreign third party administrator. The home office is PHOENIX, ARIZONA.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200400230

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: January 14, 2004



## Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of TEXAS COMMUNITY SOLUTIONS, INC., a domestic third party administrator. The home office is AUSTIN, TEXAS.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200400232

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: January 14, 2004



## Texas Lottery Commission

Instant Game Number 428 "\$30,000 Triple Payout"

1.0 Name and Style of Game.

A. The name of Instant Game No. 428 is "\$30,000 TRIPLE PAYOUT". The play style is match up with 3X and 10X win.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 428 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 428.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for

dual-image games. The possible black play symbols are: A, K, Q, J, 9, 8, 7, 6, 5, 4, 2, \$1.00, \$3.00, \$6.00, \$9.00, \$10.00, \$15.00, \$18.00, \$24.00, \$30.00, \$60.00, \$90.00, \$300, \$3,000, and \$30,000. The possible red play symbols are: A, K, Q, J, 9, 8, 7, 6, 5, 4 and 2.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 428 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
A SYMBOL	ACE
K SYMBOL	KNG
Q SYMBOL	QUN
J SYMBOL	JCK
9 SYMBOL	NIN
8 SYMBOL	EGT
7 SYMBOL	SVN
6 SYMBOL	SIX
5 SYMBOL	FIV
4 SYMBOL	FOR
2 SYMBOL	TWO
A RED SYMBOL	ACE
K RED SYMBOL	KNG
Q RED SYMBOL	QUN
J RED SYMBOL	JCK
10 RED SYMBOL	1X10
9 RED SYMBOL	NIN
8 RED SYMBOL	EGT
7 RED SYMBOL	SVN
6 RED SYMBOL	SIX
5 RED SYMBOL	FIV
4 RED SYMBOL	FOR
3 RED SYMBOL	1X3
2 RED SYMBOL	TWO
\$1.00	ONE\$
\$3.00	THREE\$
\$6.00	SIX\$
\$9.00	NINE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$18.00	EGHTN
\$24.00	TWY FOR
\$30.00	THIRTY
\$60.00	SIXTY
\$90.00	NINTY
\$300	THR HUND
\$3,000	THR THOU
\$30,000	30 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 428 - 1.2E

CODE	PRIZE
THR	\$3.00
SIX	\$6.00
NIN	\$9.00
FTN	\$15.00
EHT	\$18.00
TFR	\$24.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$3.00, \$6.00, \$9.00, \$15.00, \$18.00 or \$24.00.

H. Mid-Tier Prize - A prize of \$30.00, \$60.00, \$90.00 or \$300.

I. High-Tier Prize- A prize of \$3,000 or \$30,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (428), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 124 within each pack. The format will be: 428-0000001-000.

L. Pack - A pack of "\$30,000 TRIPLE PAYOUT" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be two (2) fanfold configurations for this game. Configuration A will show the front of ticket 000 and the back of ticket 124. Configuration B will show the back of ticket 000 and the front of ticket 124.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$30,000 TRIPLE PAYOUT" Instant Game No. 428 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$30,000 TRIPLE PAYOUT" Instant Game is determined once the latex on the ticket is scratched off to expose 40 (forty) Play Symbols. If the player gets three (3) identical card Play Symbols

within the same HAND, the player will win the prize indicated for that HAND. If the player gets two (2) identical card Play Symbols and a red "3" Play Symbol within the same HAND, the player will win three (3) times the prize indicated for that HAND. If the player gets two (2) identical card Play Symbols and a red "10" Play Symbol within the same HAND, the player will win 10 (ten) times the prize indicated for that HAND. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 40 (forty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 40 (forty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 40 (forty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 40 (forty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will never be more than one (1) multiplier in a HAND.

C. No duplicate HANDS in any order on a ticket.

D. Non-winning Play Symbols will always consist of at least two (2) but no more than five (5) red Play Symbols on a ticket.

E. All HANDS which win with three (3) like Play Symbols will contain all black Play Symbols.

F. The only time a red Play Symbol will create a win is with the "3" or "10" symbol.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "\$30,000 TRIPLE PAYOUT" Instant Game prize of \$3.00, \$6.00, \$9.00, \$15.00, \$18.00, \$24.00, \$30.00, \$60.00, \$90.00 or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$60.00, \$90.00, or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim

any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$30,000 TRIPLE PAYOUT" Instant Game prize of \$3,000 or \$30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$30,000 TRIPLE PAYOUT" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$30,000 TRIPLE PAYOUT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel



as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefore, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefore, the player whose signature appears in that area shall be the owner of the

ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 428. The approximate number and value of prizes in the game are as follows:

**Figure 3: GAME NO. 428 - 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in **</b>
<b>\$3</b>	<b>576,000</b>	<b>10.42</b>
<b>\$6</b>	<b>360,000</b>	<b>16.67</b>
<b>\$9</b>	<b>96,000</b>	<b>62.50</b>
<b>\$15</b>	<b>48,000</b>	<b>125.00</b>
<b>\$18</b>	<b>48,000</b>	<b>125.00</b>
<b>\$24</b>	<b>48,000</b>	<b>125.00</b>
<b>\$30</b>	<b>48,000</b>	<b>125.00</b>
<b>\$60</b>	<b>24,000</b>	<b>250.00</b>
<b>\$90</b>	<b>11,250</b>	<b>533.33</b>
<b>\$300</b>	<b>1,050</b>	<b>5,714.29</b>
<b>\$3,000</b>	<b>18</b>	<b>333,333.33</b>
<b>\$30,000</b>	<b>10</b>	<b>600,000.00</b>

\*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 428 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 428, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200400197

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: January 13, 2004



### Instant Game Number 435 "Crossword"

#### 1.0. Name and Style of Game.

A. The name of Instant Game Number 435 is "CROSSWORD." The play style is "key symbol match with a prize legend."

#### 1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 435 shall be \$3.00 per ticket.

#### 1.2. Definitions in Instant Game Number 435.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and blackened square.

D. Play Symbol Caption--the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and

each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 435 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	

E. Retailer Validation Code--Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 435 - 1.2E

CODE	PRIZE
THR	\$3.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the

bottom row of play data in the scratched-off play area. The format will be: 00000000000000.

G. Low-Tier Prize--A prize of \$3.00, \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize--A prize of \$100 or \$500.

I. High-Tier Prize--A prize of \$5,000 or \$35,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (435), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 000 and end with 124 within each pack. The format will be: 435-0000001-000.

L. Pack--A pack of "CROSSWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one. There will be two fanfold configurations for this game. Configuration A will show the front of ticket 000 and the back of ticket 124. Configuration B will show the back of ticket 000 and the front of ticket 124.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "CROSSWORD" Instant Game Number 435 ticket.

2.0. Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CROSSWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 139 play symbols. The player must scratch off all 18 boxed squares in the YOUR LETTERS to reveal 18 play symbol letters. For each of the 18 play symbol letters revealed in YOUR LETTERS play area, the player must reveal the identical key play symbol letter in the CROSSWORD play area. For example, if the letter E is revealed in your play symbol letters, the player should reveal all identical key symbol E's in the CROSSWORD play area. There are three solid small letters in the play area of the section designated as YOUR LETTERS that appear under the latex on the ticket. These solid letters are much smaller in size than the letter play symbol, YOUR LETTERS, and are not included in the 18 larger outlined play symbols to be used in playing the game. If the player reveals three or more complete words containing 3 letters in a continuous horizontal or vertical sequence in the crossword, the player will win the prize corresponding to the prize legend on the back of the ticket. Only the greatest prize amount listed in the prize legend which corresponds to the number of complete words can be claimed per ticket. A complete "word" must contain at least three letters. A complete "word" cannot be formed by linking letters diagonally or by reading the letters from the bottom to top. Letters combined to form a complete "word" must appear in an unbroken vertical or top to bottom horizontal string of letters in the CROSSWORD. To form a complete word, an unbroken string of letters cannot be interrupted by a block space. Any other words contained within a complete word is not added or counted for purposes of the prize legend. Every single letter in the vertical or top to bottom horizontal unbroken string must: (a) be one of the 18 larger outlined play symbols letters revealed in the play area, YOUR LETTERS, and (b) be included to form a complete "word." The possible

complete words for this ticket are contained in the CROSSWORD play area. Each possible complete word must consist of three or more letters and occupy an entire word space. Players must match all of the play symbol letters to the identical key play symbols in a possible complete word in order to complete the word. If the letters revealed form three or more complete words each of which occupy a complete word space on the CROSSWORD play area, the player will win the corresponding prize shown in the prize legend for forming that number of complete words. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. One hundred thirty-nine possible Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have 139 possible Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 139 possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 139 possible Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2. Programmed Game Parameters.

A. A ticket can only win once.

B. Adjacent tickets in a pack will not have identical patterns.

C. Each ticket consists of a Your Letters area and one crossword puzzle grid.

D. The crossword puzzle grid will be formatted with at least 109,000 configurations (i.e. puzzle layouts not including words).

E. All crossword puzzle grid configurations will be formatted within a grid that contains 11 spaces (height) by 11 spaces (width).

F. Each word will appear only once per ticket on the crossword puzzle grid.

G. Each letter will only appear once per ticket in the Your Letters play area.

H. Each Crossword Puzzle Grid will contain 19 words per puzzle per ticket made up of the following: a) 4 sets of 3-letter words; b) 5 sets of 4-letter words; c) 3 sets of 5-letter words; d) 3 sets of 6-letter words; e) 1 set of 7-letter words; f) 2 sets of 8-letter words; g) 1 set of 9-letter words.

I. There will be a minimum of three vowels in the Your Letters play area.

J. The length of words found in the crossword puzzle grid will range from 3 - 9 letters.

K. Only words from the approved word list will appear in the crossword puzzle grid.

L. You will never find a word horizontally (in either direction), vertically (in either direction), or diagonally (in either direction) in the Your Letters play area that matches a word in the crossword puzzle grid.

M. Each crossword puzzle grid will have a maximum number of different grid formations with respect to other constraints. That is, for identically formatted crossword puzzles (i.e. the same grid), all "approved words" will appear in every logical (i.e. 3 letter word = 3 letter space) position, with regards to limitations caused by the actual letters contained in each word (i.e. will not place the word "ZOO" in a position that causes an intersecting word to require the second letter to be "Z", when in fact, there are no approved words with a "Z" in the second letter position).

N. No one letter, with the exception of vowels, will appear more than nine times in the crossword puzzle grid.

O. No ticket will match eleven words or more.

P. Three to ten completed words will be revealed as per the prize structure on winning tickets.

Q. All non-winning tickets will contain a) one completed word approximately 20% of the time; b) two completed words approximately 80% of the time.

R. On non-winning tickets, sixteen to eighteen Your Letters will open at least one letter in the crossword puzzle grid.

## 2.3. Procedure for Claiming Prizes.

A. To claim a "CROSSWORD" Instant Game prize of \$3.00, \$5.00, \$10.00, \$20.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "CROSSWORD" Instant Game prize of \$5,000 or \$35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CROSSWORD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;
4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "CROSSWORD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not

claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. A Scratch off game may continue to be sold even when all the top prizes have been claimed.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game Number 435. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 435 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$3	948,000	6.33
\$5	756,000	7.94
\$10	144,000	41.67
\$20	60,000	100.00
\$100	9,750	615.38
\$500	2,000	3,000.00
\$5,000	30	200,000.00
\$35,000	8	750,000.00

\*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.13. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 435 without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant

Game Number 435, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

The following is a list of words approved by the Texas Lottery Commission for use in this game:

ACE	CAR	GUT	MAT	POP	TIE
ACT	CAT	GUY	MAY	PRO	TIP
ADD	COB	HAM	MET	PRY	TOE
ADO	COW	HAT	MID	PUT	TON
AFT	COY	HAY	MIX	RAG	TOO
AGE	CRY	HEM	MOB	RAM	TOP
AGO	CUB	HEN	MOO	RAN	TOT
AHA	CUE	HER	MOP	RAP	TOW
AID	CUP	HIM	MUD	RAT	TOY
AIM	CUT	HIP	MUG	RAW	TRY
AIR	DAB	HIS	NAB	RAY	TUB
ALL	DAY	HIT	NAP	RED	TUG
ALP	DEN	HOE	NET	RIB	TWO
AMP	DEW	HOG	NEW	RIG	URN
AND	DIG	HOP	NIL	RIM	USE
ANT	DIM	HOT	NOD	RIP	VAN
ANY	DIP	HOW	NOR	ROT	VAT
APE	DOG	HUB	NOT	ROW	VET
APT	DOT	HUE	NOW	RUB	VIA
ARC	DRY	HUG	NUT	RUG	WAG
ARM	DUB	HUM	OAF	RUN	WAX
ART	DUO	HUT	OAK	RUT	WAY
ASH	DYE	ICE	OAR	RYE	WEB
ASK	EAR	INK	OAT	SAW	WET
AWE	EAT	INN	ODD	SAY	WHO
AYE	EBB	IVY	OFF	SEA	WHY
BAD	EGG	JAB	OIL	SEE	WIG
BAH	EGO	JAR	OLD	SET	WIT
BAN	ELK	JAW	ONE	SEW	YAK
BAR	END	JAY	OPT	SHY	YEN
BAT	ERA	JIG	ORE	SIP	YES
BAY	EYE	JOB	OUR	SIR	YET
BED	FAN	JOG	OUT	SIT	YOU
BEE	FAR	JOY	OWE	SIX	ZAP
BEG	FEE	JUG	OWL	SKI	ZIP
BET	FEW	KEY	OWN	SLY	ZOO
BID	FEZ	KID	PAN	SON	ABLE
BIG	FIR	KIN	PAR	SOW	ACHE
BIN	FIT	KIT	PAW	SPA	ACID
BIT	FIX	LAB	PAY	SPY	ACRE
BOA	FOE	LAD	PEA	SUB	AFAR
BOG	FOG	LAG	PEG	SUM	AHOY
BOW	FOR	LAP	PEN	SUN	AIDE
BOY	FOX	LAW	PEP	TAB	AJAR
BUD	FRY	LEE	PET	TAG	AKIN
BUG	FUN	LEG	PIE	TAN	ALAS
BUS	FUR	LET	PIG	TAP	ALLY
BUY	GAG	LOW	PIN	TAR	ALOE
CAB	GAP	MAD	PIT	TEA	ALSO
CAN	GEM	MAN	PLY	TEE	ALTO
CAP	GET	MAP	POD	TEN	AMID

ANEW	BLOT	CITY	DECK	FACT	GEAR
ANTE	BLUE	CLAM	DEED	FADE	GIFT
ANTI	BLUR	CLAW	DEEM	FAIL	GIRL
AQUA	BOAT	CLAY	DEEP	FAIR	GIVE
ARCH	BODY	CLIP	DEER	FALL	GLAD
AREA	BOIL	CLUB	DENT	FAME	GLEE
ARID	BOLD	CLUE	DESK	FARE	GLOW
ATOM	BOLT	COAL	DIAL	FARM	GLUE
AUNT	BOND	COAT	DICE	FAST	GLUT
AURA	BOOK	COAX	DILL	FAWN	GNAT
AUTO	BOOT	CODE	DIME	FEAR	GOAL
AVID	BOSS	COIL	DIRE	FEED	GOAT
AWAY	BOTH	COIN	DIRT	FEEL	GOLF
AXIS	BOUT	COLD	DISH	FEET	GONE
AXLE	BOWL	COLT	DISK	FILE	GOOD
BABY	BRAG	COMB	DIVE	FILL	GOWN
BACK	BRAN	CONE	DOCK	FILM	GRAB
BAIL	BRIM	COOK	DOLL	FINE	GRAY
BAIT	BROW	COOL	DOME	FIRE	GREY
BAKE	BUCK	COPE	DONE	FISH	GRID
BALD	BULB	COPY	DOOR	FLAG	GRIN
BALK	BULK	CORD	DOVE	FLAP	GRIP
BALL	BULL	CORE	DOWN	FLAT	GROW
BAND	BUMP	CORK	DRAW	FLAW	GULF
BANK	BUNK	CORN	DROP	FLEA	GULL
BARE	BUNT	COST	DRUM	FLEE	GULP
BARK	BUOY	COVE	DUAL	FLEW	GUST
BARN	BURY	COZY	DUCK	FLIP	HAIL
BASE	BUSH	CREW	DUCT	FLOW	HAIR
BASH	BUSY	CRIB	DUEL	FOAM	HALF
BASS	CAGE	CROP	DUET	FOLD	HALL
BATH	CAKE	CROW	DULL	FOND	HALT
BEAD	CALF	CUBE	DUNE	FOOD	HAND
BEAK	CALL	CUFF	DUSK	FOOT	HARD
BEAM	CALM	CURB	DUST	FORK	HARE
BEAN	CAMP	CURE	DUTY	FORM	HARK
BEAR	CANE	CURL	EACH	FORT	HARP
BEAU	CAPE	CUTE	EARL	FOUR	HATS
BEEF	CARD	CYAN	EARN	FREE	HAUL
BEEP	CARE	DALE	EAST	FROG	HAVE
BEET	CARS	DAMP	EASY	FROM	HAWK
BELL	CART	DARE	ECHO	FUEL	HAYS
BELT	CASE	DARK	EDGE	FULL	HAZE
BEND	CAST	DART	EDIT	FUND	HAZY
BENT	CAVE	DASH	ELSE	FUSE	HEAL
BEST	CELL	DATA	EPIC	FUSS	HEAR
BIAS	CHAT	DATE	ETCH	GAIN	HEAT
BIKE	CHEF	DAWN	EVEN	GALA	HEEL
BILL	CHIN	DAZE	EXAM	GAME	HEIR
BIND	CHIP	DEAL	EXIT	GATE	HELD
BIRD	CITE	DEAN	FACE	GAZE	HELP

HERB	JUNE	LIST	MOCK	OXEN	QUIZ
HERD	JUNK	LIVE	MODE	PACE	RACE
HERE	JURY	LOAD	MOLD	PACK	RACK
HERO	JUST	LOAF	MOOD	PACT	RAFT
HIDE	KEEN	LOAN	MOON	PAGE	RAGE
HIGH	KEEP	LOCK	MORE	PAID	RAID
HIKE	KEYS	LOFT	MOSS	PALE	RAIL
HILL	KICK	LONG	MOST	PALM	RAIN
HINT	KIND	LOOK	MOTH	PARK	RAKE
HIRE	KING	LOOP	MOVE	PART	RAMP
HIVE	KITE	LOUD	MUCH	PASS	RARE
HOAX	KNEE	LOVE	MULE	PAST	RATE
HOLD	KNIT	LUCK	MUST	PATH	READ
HOLE	KNOT	LULL	MYTH	PAVE	REAL
HOME	KNOW	LURE	NAIL	PAWN	REAR
HOOD	LACE	LURK	NAME	PEAK	REED
HOOK	LACK	LUTE	NARY	PEAL	REEF
HOOP	LADY	LYNX	NEAR	PEAR	REEL
HOPE	LAIR	MADE	NEAT	PEER	RELY
HOSE	LAKE	MAIL	NEED	PICK	RENT
HOST	LAMB	MAIN	NEON	PIER	REST
HOURL	LAMP	MAKE	NEST	PILE	RICE
HOWL	LAND	MALL	NEXT	PINE	RICH
HUGE	LANE	MALT	NICE	PINK	RIDE
HULA	LARD	MANY	NICK	PINT	RING
HULL	LARK	MARK	NINE	PIPE	RINK
HUNT	LASH	MARS	NODE	PITA	RIPE
HUSH	LAST	MASK	NONE	PITY	RISE
HYPE	LATE	MAST	NOOK	PLAN	RISK
ICON	LAVA	MATH	NOON	PLAY	ROAD
IDEA	LAWN	MAZE	NORM	PLEA	ROAM
IDLE	LAZY	MEAL	NOSE	PLOT	ROAR
INCH	LEAD	MEET	NOTE	PLOW	ROBE
INTO	LEAF	MELT	NOUN	PLUM	ROCK
IOTA	LEAK	MEMO	NUMB	PLUS	ROLE
IRIS	LEAN	MEND	OATH	POEM	ROLL
IRON	LEAP	MENU	OBEY	POLL	ROOF
ITCH	LEFT	MESH	OBOE	POND	ROOM
ITEM	LEND	MESS	OKAY	PONY	ROOT
JACK	LESS	MICE	ONCE	POOL	ROPE
JADE	LEVY	MILD	ONLY	POSE	ROSE
JAZZ	LIFE	MILE	ONTO	POSH	RUBY
JEEP	LIFT	MILK	ONUS	POST	RUDE
JEST	LIKE	MILL	ONYX	POUR	RUIN
JIVE	LILY	MIND	OOZE	PULL	RULE
JOIN	LIMB	MINE	OPEN	PURE	RUNG
JOKE	LIME	MINK	OPUS	PURR	RUSH
JOLT	LINE	MINT	OUCH	PUSH	RUST
JUDO	LINK	MISS	OVAL	PUTT	SACK
JULY	LINT	MIST	OVEN	QUIP	SAGE
JUMP	LION	MOAT	OVER	QUIT	SAKE



SALE	SOCK	TENT	VARY	WOOL	ALERT
SALT	SODA	TERM	VASE	WORD	ALIAS
SAME	SOFA	TEST	VAST	WORK	ALIBI
SAND	SOFT	TEXT	VEAL	WORM	ALIEN
SAVE	SOIL	THAT	VENT	WORN	ALIGN
SCAN	SOLD	THAW	VERB	WRAP	ALIKE
SCAR	SOLE	THEN	VERY	WREN	ALIVE
SEAL	SOLO	THEY	VEST	YARD	ALLEY
SEAM	SOME	THIN	VETO	YARN	ALLOT
SEAT	SONG	THUS	VIEW	YAWN	ALLOW
SEED	SOON	TIDE	VINE	YEAR	ALLOY
SEEK	SORE	TIDY	VISA	YELL	ALOHA
SEEM	SORT	TIER	VOLT	YOGA	ALONE
SELF	SOUL	TILE	VOTE	YOLK	ALONG
SELL	SOUP	TILT	WADE	YORE	ALOOF
SEMI	SOUR	TIME	WAGE	YOUR	ALPHA
SEND	SPAN	TINT	WAIT	ZEAL	ALTER
SENT	SPIN	TINY	WAKE	ZERO	AMASS
SHED	SPOT	TIRE	WALK	ZEST	AMAZE
SHIN	STAR	TOAD	WALL	ZINC	AMBER
SHIP	STAY	TOIL	WAND	ZONE	AMIGO
SHOE	STEM	TOLD	WANT	ZOOM	AMINO
SHOP	STEP	TOLL	WARD	ABATE	AMISS
SHOW	STEW	STONE	WARM	ABIDE	AMONG
SHUT	STIR	TOOL	WARN	ABODE	AMPLE
SICK	STOP	TOSS	WARY	ABOUT	AMUSE
SIDE	SUCH	TOUR	WASH	ABOVE	ANGER
SIFT	SUIT	TOWN	WATT	ABYSS	ANGLE
SIGN	SURE	TRAP	WAVE	ACORN	ANGST
SILK	SURF	TRAY	WEAK	ACTOR	ANKLE
SILO	SWAN	TREE	WEAR	ACUTE	ANNEX
SING	SWAT	TRIM	WEEK	ADAGE	ANNOY
SINK	SWIM	TRIO	WEEP	ADAPT	ANTIC
SIZE	TACK	TRIP	WELD	ADEPT	ANVIL
SKEW	TACT	TROT	WELL	ADIEU	APART
SKIM	TAIL	TRUE	WEST	ADIOS	APPLE
SKIN	TAKE	TUBE	WHAT	ADMIT	APPLY
SKIP	TALE	TUCK	WHEN	ADOPT	APRON
SKIS	TALK	TUNA	WHIM	ADORE	ARENA
SLAP	TALL	TUNE	WIDE	ADULT	ARGUE
SLED	TAME	TURF	WIFE	AFFIX	ARISE
SLIM	TANK	TURN	WILD	AFTER	ARMOR
SLIP	TAPE	TUSK	WIND	AGAIN	AROMA
SLOW	TASK	TWIG	WING	AGENT	ARRAY
SMOG	TAXI	TWIN	WIPE	AGILE	ARROW
SNAP	TEAK	TYPE	WIRE	AGONY	ASCOT
SNOW	TEAM	UNDO	WISE	AGREE	ASHES
SNUG	TEAR	UNIT	WISH	AHEAD	ASIDE
SOAK	TEEN	URGE	WITH	AISLE	ASPEN
SOAP	TELL	USED	WOLF	ALARM	ASSET
SOAR	TEND	VAIL	WOOD	ALBUM	ATLAS

ATOLL	BLIND	CARRY	CONGA	EARLY	FORCE
ATTIC	BLINK	CARVE	CORAL	EARTH	FOUND
AUDIO	BLITZ	CATCH	COUCH	EIGHT	FRAIL
AUDIT	BLOCK	CAUSE	COUNT	ELBOW	FRAME
AVAIL	BLOOM	CEASE	COURT	EMCEE	FRANK
AVERT	BLUFF	CEDAR	COVER	EMPTY	FRESH
AVOID	BLUNT	CELLO	CRAFT	ENACT	FRONT
AWAIT	BLUSH	CHAIN	CRANE	ENJOY	FROST
AWAKE	BOARD	CHAIR	CRATE	ENTER	FROWN
AWARD	BOAST	CHALK	CRAVE	ENTRY	FRUIT
AWARE	BONUS	CHAOS	CRAWL	ENVOY	FUNNY
AWASH	BOOST	CHARM	CREEK	EQUAL	GAMES
AWFUL	BOOTH	CHART	CREST	ERASE	GIANT
AWOKE	BOUND	CHASE	CRISP	ERODE	GIVEN
AXIOM	BRACE	CHEAP	CROWD	ERROR	GLARE
AZURE	BRAID	CHECK	CROWN	ESSAY	GLASS
BACON	BRAIN	CHEER	CRUSH	EVADE	GLAZE
BADGE	BRAKE	CHESS	CRUST	EVENT	GLITZ
BAGEL	BRAND	CHIEF	CURVE	EVERY	GLOBE
BAKER	BRASS	CHILD	CYCLE	EXACT	GLOOM
BANJO	BRAVE	CHILI	DAILY	EXIST	GLORY
BARGE	BRAVO	CHILL	DAIRY	EXTRA	GLOSS
BARON	BRAWN	CHIME	DAISY	FABLE	GLOVE
BASIC	BREAD	CHIRP	DANCE	FACET	GOING
BASIL	BREAK	CHORD	DEBIT	FAINT	GOOSE
BASIN	BREED	CHORE	DECAL	FAULT	GORGE
BASIS	BRIAR	CHUTE	DECOY	FAUNA	GRACE
BATCH	BRICK	CIDER	DELAY	FEAST	GRADE
BATON	BRIEF	CIVIC	DELTA	FEIGN	GRAIN
BAYOU	BRING	CIVIL	DENIM	FEMUR	GRAND
BEACH	BROOK	CLAIM	DEPOT	FENCE	GRANT
BEARD	BROOM	CLASH	DEPTH	FETCH	GRAPE
BEECH	BROWN	CLASS	DEUCE	FEVER	GRAPH
BEGIN	BRUSH	CLEAN	DIARY	FIELD	GRASP
BEIGE	BUDDY	CLEAR	DIGIT	FINAL	GRASS
BEING	BUDGE	CLERK	DINER	FLAGS	GRAVY
BELOW	BUGLE	CLICK	DISCO	FLAIR	GREAT
BENCH	BUILD	CLIFF	DITCH	FLAKE	GREEN
BERET	BUILT	CLIMB	DODGE	FLAME	GREET
BERRY	BUNCH	CLOAK	DOUBT	FLARE	GRILL
BIRCH	BURST	CLOCK	DOUGH	FLASH	GRINS
BIRDS	CABIN	CLOSE	DOZEN	FLEET	GROOM
BISON	CABLE	CLOTH	DRAFT	FLOAT	GROUP
BLACK	CACHE	CLOUD	DRAIN	FLOCK	GUARD
BLAME	CADET	CLOWN	DRAMA	FLOOR	GUESS
BLAND	CAMEL	CLUES	DREAM	FLORA	GUEST
BLANK	CAMEO	COACH	DRESS	FLOSS	GUIDE
BLARE	CANAL	COAST	DRIFT	FLOUR	HABIT
BLAST	CANDY	COBRA	DRIVE	FLUID	HANDS
BLAZE	CANOE	COMET	DWELL	FLUTE	HANDY
BLEND	CARGO	COMIC	EAGLE	FOCUS	HAPPY

HARDY	JUROR	MEDIA	NOISY	PILOT	QUIRK
HASTE	KARAT	MELON	NOMAD	PINCH	QUITE
HATCH	KAYAK	MERCY	NORTH	PINTO	QUITS
HEARD	KNACK	MERGE	NOVEL	PITCH	QUOTA
HEART	KNEAD	MERIT	NUDGE	PIVOT	QUOTE
HEAVY	KNOCK	MERRY	NURSE	PIXEL	RADAR
HEDGE	KOALA	MESSY	NYLON	PIZZA	RADIO
HELLO	LABEL	METAL	OASIS	PLACE	RAISE
HINGE	LACES	METER	OCCUR	PLAID	RALLY
HIPPO	LADLE	MIDST	OCEAN	PLAIN	RANCH
HITCH	LAKES	MIGHT	OFFER	PLANE	RANGE
HOBBY	LAMBS	MILKY	OFTEN	PLANK	RAPID
HONEY	LAPEL	MIMIC	OLIVE	PLANT	RATIO
HONOR	LAPSE	MINCE	ONION	PLATE	RAVEN
HORSE	LARGE	MINED	OPERA	PLUMB	RAZOR
HOTEL	LASER	MINES	OPTIC	PLUME	REACH
HOUND	LATCH	MINOR	ORBIT	PLUSH	REACT
HOUSE	LATER	MIRTH	ORDER	PLUTO	READY
HUMAN	LAUGH	MITER	OTHER	POINT	RECAP
HUMID	LAYER	MIXED	OTTER	POLAR	REFER
HUMOR	LEAFY	MODEM	OUGHT	POLKA	REGAL
HUNCH	LEARN	MOIST	OUNCE	POPPY	REIGN
HURRY	LEASE	MONEY	OUTDO	PORCH	RELAX
HUTCH	LEASH	MONTH	OZONE	POUCH	RELAY
HYDRO	LEAST	MOODY	PAIS	POUND	RELIC
HYPER	LEAVE	MOOSE	PAINT	POWER	RENEW
IDEAL	LEDGE	MOTOR	PALMS	PRESS	REPLY
IDEAS	LEGAL	MOTTO	PANDA	PRICE	RESET
IGLOO	LEMON	MOUSE	PANEL	PRIDE	RETRY
IMAGE	LEVEL	MOUTH	PAPER	PRIME	REUSE
IMPLY	LEVER	MOVER	PARCH	PRINT	RHINO
INDEX	LIGHT	MOVIE	PARTY	PRIOR	RHYME
INFER	LILAC	MUDDY	PASTA	PRISM	RIDGE
INNER	LIMIT	MUNCH	PASTE	PRIZE	RIGHT
INPUT	LINEN	MURAL	PATCH	PROOF	RINSE
IRATE	LINGO	MUSIC	PATIO	PROSE	RISEN
IRONY	LIVID	NACHO	PAUSE	PROUD	RIVAL
ISSUE	LOBBY	NAIVE	PEACE	PUPIL	RIVER
ITEMS	LOCAL	NASAL	PEACH	PURSE	ROAST
IVORY	LODGE	NATAL	PEALS	PUTTY	ROBIN
JAUNT	LOGIC	NERVE	PEARL	QUAIL	ROBOT
JEANS	LOOSE	NEVER	PECAN	QUAKE	RODEO
JELLY	LOYAL	NEWER	PEDAL	QUART	ROTOR
JEWEL	LUCKY	NICHE	PENNY	QUEEN	ROUGH
JOIST	LUNAR	NIECE	PETAL	QUERY	ROUND
JOKER	LUNCH	NIGHT	PETTY	QUEST	ROUTE
JOLLY	LYRIC	NINES	PHASE	QUEUE	ROYAL
JOUST	MAUVE	NINTH	PHONE	QUICK	RULES
JUDGE	MAYBE	NOBLE	PHOTO	QUIET	RURAL
JUICE	MAYOR	NOBLY	PIANO	QUILL	SALAD
JUMBO	MEDAL	NOISE	PIECE	QUILT	SALON

SALVE	SINUS	SPOOL	SWARM	TRACE	VENUS
SATIN	SIREN	SPOON	SWEAT	TRACK	VERGE
SAUCE	SKATE	SPORT	SWEEP	TRADE	VERSE
SAUNA	SKIED	SPOUT	SWEET	TRAIL	VIDEO
SCALD	SKIES	SPRAY	SWIFT	TRAIN	VILLA
SCALE	SKILL	SQUAD	SWING	TRAIT	VINYL
SCARF	SLACK	SQUID	SWIRL	TRASH	VISIT
SCENE	SLANG	STACK	SWOON	TREAT	VISOR
SCENT	SLANT	STAFF	SYRUP	TREND	VITAL
SCOFF	SLASH	STAGE	TABLE	TRIAL	VIVID
SCOLD	SLATE	STAIN	TANGO	TRIBE	VOCAL
SCOOP	SLEEK	STAIR	TASTE	TRICK	VOGUE
SCOOT	SLEEP	STAKE	TEACH	TROOP	VOICE
SCORE	SLICE	STAMP	TEETH	TROUT	VOTER
SCOUT	SLICK	STAND	TEMPO	TRUCE	WAGON
SCRAP	SLIDE	STARE	TEMPT	TRUCK	WAIST
SCRUB	SLOOP	START	TENOR	TRUNK	WALTZ
SCUBA	SLOPE	STATE	TENSE	TRUST	WASTE
SEIZE	SMALL	STEAK	THANK	TRUTH	WATCH
SENSE	SMART	STEAM	THEIR	TULIP	WATER
SERVE	SMELL	STEEL	THEME	TWEAK	WAVER
SEVEN	SMILE	STEEP	THERE	TWEED	WEAVE
SHADE	SMOCK	STEER	THESE	TWINE	WEDGE
SHAKE	SNACK	STICK	THICK	TWIRL	WEIGH
SHALE	SNAIL	STILL	THING	TWIST	WHALE
SHALL	SNAKE	STING	THINK	UNCLE	WHARF
SHAME	SNEAK	STOCK	THIRD	UNDER	WHEAT
SHAPE	SNIFF	STOMP	THORN	UNFIT	WHEEL
SHARE	SNORE	STONE	THOSE	UNIFY	WHERE
SHARK	SNOWY	STORE	THREE	UNION	WHICH
SHARP	SOGGY	STORK	THROW	UNITY	WHILE
SHAVE	SOLAR	STORM	THUMB	UNTIE	WHIRL
SHAWL	SOLID	STORY	THUMP	UNTIL	WHITE
SHEEP	SOLVE	STOVE	TIDAL	UPPER	WHOLE
SHEER	SONAR	STRAP	TIGER	UPSET	WHOSE
SHEET	SONIC	STRAW	TIGHT	URBAN	WIDEN
SHELF	SORRY	STRAY	TIMID	USAGE	WIDTH
SHELL	SOUND	STRUT	TITLE	USHER	WINDY
SHIFT	SOUTH	STUCK	TOAST	USUAL	WORLD
SHINE	SPACE	STUDY	TODAY	USURP	WORRY
SHIRT	SPARE	STUFF	TOKEN	UTTER	WORTH
SHOAL	SPARK	STUNT	TOOTH	VAGUE	WOVEN
SHOCK	SPEAK	STYLE	TOPIC	VALET	WRECK
SHOES	SPEAR	SUAVE	TORCH	VALID	WRIST
SHORE	SPEED	SUEDE	TOTAL	VALOR	WRITE
SHORT	SPELL	SUGAR	TOTEM	VALUE	WRONG
SHRED	SPICE	SUITE	TOUCH	VALVE	YACHT
SHRUB	SPIKE	SUNNY	TOUGH	VAPOR	YEARN
SIEGE	SPILL	SUPER	TOWEL	VAULT	YIELD
SIGHT	SPLIT	SURGE	TOWER	VENOM	YOUNG
SINCE	SPOIL	SWAMP	TOXIC	VENUE	YOUTH

ZEBRA	APPEAL	BARTER	BUDGET	CIRCUS	DANCER
ABACUS	APPEAR	BASKET	BUFFET	CITRUS	DANGER
ABROAD	APPEND	BATTER	BURDEN	CLAUSE	DARING
ABRUPT	ARCADE	BATTLE	BUREAU	CLEVER	DAZZLE
ABSENT	ARCHER	BAUBLE	BURLAP	CLIENT	DEBATE
ABSORB	ARCTIC	BAZAAR	BURROW	CLINCH	DECADE
ACCENT	ARGENT	BEACON	BUSHEL	CLOSET	DECENT
ACCEPT	ARMADA	BEAGLE	BUTTER	CLOUDS	DECIDE
ACCESS	AROUND	BEAKER	BUTTON	CLOUDY	DECODE
ACCORD	ARREST	BEARER	CACTUS	CLOVER	DEDUCE
ACCRUE	ARRIVE	BEAUTY	CAMERA	COBWEB	DEFEAT
ACCUSE	ARTERY	BECAME	CAMPUS	COCOON	DEFINE
ACETIC	ARTIST	BECOME	CANADA	COFFEE	DEGREE
ACORNS	ASCEND	BEFORE	CANARY	COGNAC	DELUGE
ACROSS	ASHORE	BEHALF	CANCEL	COLLAR	DEMAND
ACTING	ASLEEP	BEHAVE	CANDID	COLONY	DENIAL
ACTION	ASPECT	BEHIND	CANDLE	COLUMN	DENTAL
ACTIVE	ASPIRE	BETTER	CANINE	COMEDY	DEPART
ACTUAL	ASSERT	BEWARE	CANOPY	COMMIT	DEPEND
ADJUST	ASSESS	BEYOND	CANVAS	COMMON	DEPICT
ADMIRE	ASSETS	BICEPS	CANYON	COMPEL	DERAIL
ADRIFT	ASSIGN	BILLOW	CARAFE	COMPLY	DERIVE
ADSORB	ASSIST	BINARY	CARBON	CONVEX	DESERT
ADVERB	ASSUME	BINDER	CAREER	CONVEY	DESIGN
ADVICE	ASSURE	BIONIC	CARPET	CONVOY	DESIRE
ADVISE	ASTUTE	BOILER	CARROT	COOKIE	DETACH
AERIAL	ATTACH	BORDER	CARTON	COPIER	DETAIL
AFFAIR	ATTAIN	BORING	CASHEW	COPPER	DETOUR
AFFECT	ATTEND	BORROW	CASTLE	CORNER	DEVICE
AFFIRM	ATTEST	BOTANY	CASUAL	CORRAL	DEVOTE
AFFORD	AUTUMN	BOTHER	CATTLE	COSMIC	DIESEL
AFLOAT	AVALON	BOTTLE	CAVERN	COTTON	DIGEST
AFRAID	AVENUE	BOTTOM	CELERY	COUGAR	DILUTE
AGENCY	AWHILE	BOUNCE	CELLAR	COUPLE	DINNER
AGENDA	AZALEA	BOVINE	CEMENT	COUPON	DIRECT
AGHAST	BABBLE	BOWLER	CENSUS	COURSE	DISHES
ALCOVE	BABOON	BRANCH	CENTER	COYOTE	DIVERT
ALLEGE	BADGER	BREACH	CEREAL	CRAFTY	DIVIDE
ALLIED	BAFFLE	BREATH	CHALET	CRATER	DOCTOR
ALLUDE	BAKERY	BREEZE	CHANCE	CRAVAT	DOLLAR
ALLURE	BALLET	BRIDGE	CHANGE	CRAYON	DOMAIN
ALMOND	BALLOT	BRIGHT	CHARGE	CREASE	DOMINO
ALMOST	BALSAM	BROACH	CHEESE	CREATE	DONATE
ALPINE	BAMBOO	BROKEN	CHOICE	CREDIT	DONKEY
AMBUSH	BANANA	BROKER	CHOOSE	CRITIC	DOSAGE
AMULET	BANDIT	BRONZE	CHORAL	CROCUS	DRAGON
ANTHEM	BANKER	BROWSE	CHORES	CRUISE	DREAMS
ANTLER	BANTER	BRUNCH	CHORUS	CRUNCH	DUPLEX
APATHY	BARBER	BUBBLE	CHROME	CURFEW	DURING
APIARY	BARLEY	BUCKET	CINEMA	CUSTOM	EASILY
APPALL	BARREL	BUCKLE	CIRCLE	DAMAGE	EDITOR

EFFECT	FLAWED	HEATER	JERSEY	LISTEN	MISHAP
EFFORT	FLEECE	HECKLE	JESTER	LITTLE	MISSSES
EITHER	FLIGHT	HECTIC	JIGGLE	LIVING	MISTED
EMERGE	FLORAL	HEIGHT	JIGSAW	LIZARD	MITTEN
EMPIRE	FLOWER	HELIUM	JINGLE	LOCATE	MOBILE
ENAMEL	FLYING	HELMET	JOCKEY	LOCKER	MODERN
ENCODE	FOLLOW	HERMIT	JOKING	LOTION	MODEST
ENCORE	FOREST	HIATUS	JOVIAL	LOUNGE	MODIFY
ENDURE	FORGET	HIKING	JOYFUL	LOVELY	MODULE
ENERGY	FORMAL	HOBBLE	JOYOUS	LUMBER	MOMENT
ENGINE	FORMAT	HOCKEY	JUGGLE	LUXURY	MONKEY
ENIGMA	FORMER	HOLLOW	JUMBLE	MAGNET	MORROW
ENOUGH	FOSSIL	HONEST	JUNGLE	MAMMAL	MORTAR
ENSIGN	FREEZE	HORNET	JUNIOR	MANAGE	MOTION
ENTAIL	FRIEND	HUDDLE	KARATE	MANNER	MOTIVE
ENTIRE	FROLIC	HUMANE	KENNEL	MANUAL	MURMUR
ENTITY	FROZEN	HUMBLE	KERNEL	MARBLE	MUSCLE
EQUITY	FRUGAL	HUNGER	KETTLE	MARGIN	MUSEUM
ERASER	FUNNEL	HUNGRY	KINDLY	MARINE	MUSKOX
ERRAND	FUSION	HURDLE	KITTEN	MARKER	MUSLIN
ESCAPE	FUTURE	HUSTLE	KNIGHT	MARKET	MUSSEL
ESTATE	GADGET	HYPHEN	LABELS	MARLIN	MUTINY
ESTEEM	GALAXY	ICICLE	LACTIC	MAROON	MUTUAL
EXCEED	GARDEN	IMMUNE	LADDER	MARVEL	MYRIAD
EXCESS	GATHER	IMPACT	LADIES	MASCOT	MYRTLE
EXCUSE	GAZEBO	IMPEDE	LAGOON	MASTER	MYSELF
EXHALE	GENIUS	IMPORT	LARGER	MATRIX	MYSTIC
EXPAND	GENTLE	IMPOSE	LARYNX	MATTER	NAPKIN
EXPECT	GLIDER	INCHES	LATELY	MATURE	NARROW
EXPERT	GLOBAL	INCOME	LATEST	MEADOW	NATION
FABRIC	GLOOMY	INDEED	LAUNCH	MEDIUM	NEEDLE
FACADE	GLOSSY	INDOOR	LAWFUL	MELLOW	NEGATE
FACIAL	GOBLET	INFANT	LAWYER	MELODY	NEPHEW
FACTOR	GOGGLE	INFORM	LAYOUT	MEMBER	NETTLE
FALCON	GOLDEN	INNING	LEADER	MEMORY	NEURAL
FAMILY	GOLFER	INSECT	LEAGUE	MERLIN	NEURON
FAMOUS	GOSSIP	INSIDE	LEAVES	METEOR	NEWTON
FARMER	GOVERN	INSIST	LEDGER	METHOD	NIBBLE
FASTEN	GRAPES	INTACT	LEEWAY	METRIC	NICELY
FASTER	GROUND	INTEND	LEGACY	METTLE	NICKEL
FATHER	GROWTH	INTERN	LEGEND	MIDDLE	NIMBLE
FAUCET	GUITAR	INVEST	LENDER	MIDWAY	NIMBLY
FEEDER	GYPSUM	INVITE	LENGTH	MIGHTY	NIMBUS
FELINE	HAMLET	IODINE	LESSON	MINGLE	NOBODY
FIDDLE	HAMMER	ISLAND	LETTER	MINNOW	NORMAL
FIGURE	HAMPER	ITALIC	LIGHTS	MINTED	NOTARY
FILLER	HANDLE	ITSELF	LIKELY	MINUET	NOTICE
FILTER	HANGAR	JACKET	LILIES	MINUTE	NOTIFY
FINGER	HAPPEN	JAGUAR	LINEAR	MIRAGE	NOTING
FINISH	HARBOR	JARGON	LINGER	MIRROR	NOTION
FLAMES	HEALTH	JAUNTY	LIQUID	MISFIT	NOVICE

NOZZLE	PENCIL	PURIFY	RELATE	SAILOR	SIGNAL
NUANCE	PEOPLE	PURPLE	RELIEF	SALAMI	SILICA
NUGGET	PEPPER	PURSUE	RELISH	SALARY	SILVER
NUMBER	PERMIT	PUZZLE	REMAIN	SALINA	SIMPLE
NUZZLE	PERSON	PYTHON	REMARK	SALINE	SINGLE
OBJECT	PERUSE	QUAINT	REMEDY	SALTED	SISTER
OBTAIN	PHRASE	QUARRY	REMIND	SALUTE	SIZZLE
OCTAVE	PHYSIC	QUARTZ	REMOTE	SAMPLE	SKETCH
OFFICE	PICKED	QUENCH	REMOVE	SANDAL	SKIING
OFFSET	PICKLE	QUICHE	RENOWN	SATIRE	SLALOM
OLIVER	PICNIC	QUIVER	RENTAL	SATURN	SLEEVE
OMELET	PIECED	RABBIT	REPAIR	SAVORY	SLEIGH
ONWARD	PIGEON	RACKET	REPEAT	SCARCE	SLEUTH
OPAQUE	PILLAR	RADISH	REPLAY	SCHEME	SLIGHT
OPTION	PILLOW	RADIUM	REPORT	SCHOOL	SLOGAN
ORANGE	PILOTS	RADIUS	RERUNS	SCORCH	SLOWLY
ORCHID	PIRATE	RAFFLE	RESCUE	SCRAPE	SNAZZY
ORIGIN	PISTON	RAISIN	RESIDE	SCREAM	SNEEZE
ORIOLE	PLANET	RAMBLE	RESIST	SCREEN	SOCCER
OUTFIT	PLAQUE	RANDOM	RESORT	SCRIBE	SOCIAL
OUTING	PLASMA	RANGER	RESTED	SCRIPT	SODIUM
OUTLAW	PLEASE	RAPIDS	RESULT	SCROLL	SOFTEN
OUTPUT	PLEDGE	RAPPEL	RESUME	SCYTHE	SOFTER
OUTRUN	PLURAL	RASCAL	RETAIL	SEARCH	SOFTLY
OUTSET	POCKET	RATHER	RETIRE	SEASON	SOLEMN
OXYGEN	PODIUM	RATING	RETURN	SEATED	SOMBER
OYSTER	POETRY	RATTLE	REVEAL	SECOND	SONNET
PACIFY	POLICE	RAVINE	REVIEW	SECRET	SOOTHE
PACKED	POLICY	REALLY	REWARD	SECURE	SORROW
PADDLE	POLISH	REASON	REWIND	SEESAW	SOURCE
PAJAMA	POLITE	REBATE	RHYTHM	SELDOM	SPARSE
PALACE	POLLEN	RECALL	RIBBON	SELECT	SPEECH
PALLET	PONIES	RECENT	RIDDLE	SENATE	SPIDER
PAMPER	POODLE	RECESS	RIPPLE	SENIOR	SPIRAL
PANTRY	POPLAR	RECIPE	RITUAL	SENSOR	SPIRIT
PARADE	POROUS	RECORD	ROBUST	SEQUEL	SPLASH
PARCEL	PORTER	REDEEM	ROCKET	SERENE	SPLINT
PARDON	POSSUM	REDUCE	RODENT	SERIES	SPOKEN
PARENT	POTATO	REFILL	ROSTER	SESAME	SPONGE
PARLOR	POWDER	REFINE	ROTATE	SETTLE	SPORTS
PARROT	PREFER	REFLEX	RUDDER	SHADOW	SPRAIN
PASTEL	PREFIX	REFORM	RUFFLE	SHAGGY	SPREAD
PASTRY	PRETTY	REFUEL	RUNNER	SHELVE	SPRING
PATENT	PROFIT	REFUGE	RUNOFF	SHIELD	SPRINT
PATROL	PROMPT	REFUND	RUNWAY	SHIVER	SPROUT
PAUPER	PROPER	REFUSE	RUSSET	SHOULD	SPRUCE
PAYOUT	PUBLIC	REGAIN	RUSTLE	SHOVEL	SQUALL
PEAKED	PUDDLE	REGARD	SACHET	SHOWER	SQUARE
PEANUT	PULLEY	REGION	SADDLE	SHRIMP	SQUASH
PEBBLE	PUPPET	REGRET	SAFARI	SHRINK	SQUEAK
PEDDLE	PURELY	REJECT	SAFELY	SIERRA	SQUEAL

SQUINT	TARGET	UNGLUE	WASHER	ALFALFA	ATTEMPT
SQUIRE	TARTAN	UNIQUE	WEALTH	ALGEBRA	ATTRACT
STABLE	TATTOO	UNLESS	WEASEL	ALLERGY	AUCTION
STAPLE	TENANT	UNLIKE	WICKER	ALMANAC	AUDIBLE
STATIC	TENDER	UNLOAD	WILLOW	ALMONDS	AUDITOR
STATUE	TENDON	UNLOCK	WINDOW	ALREADY	AVERAGE
STATUS	TENNIS	UNPACK	WINTER	ALUMNUS	AVIATOR
STEADY	TENURE	UNPLUG	WISDOM	AMAZING	AVOCADO
STEREO	THANKS	UNTIDY	WITHIN	AMIALE	AWESOME
STITCH	THEORY	UNWIND	WOBBLE	AMMONIA	AWKWARD
STORMY	THESIS	UNWRAP	WONDER	AMNESIA	AWNINGS
STRAIN	THIRST	UPDATE	WORTHY	AMPLIFY	BACKLOG
STRAIT	THREAD	UPHILL	WRENCH	AMUSING	BAGGAGE
STREAK	THRIFT	UPLIFT	WRITER	ANAGRAM	BALANCE
STREAM	THRILL	UPRISE	YELLOW	ANALOGY	BALCONY
STREET	THROAT	UPROAR	YONDER	ANALYST	BALLOON
STRIDE	THRONE	UPSIDE	ZENITH	ANALYZE	BANDAGE
STRIKE	TICKET	UPWARD	ZIGZAG	ANARCHY	BANQUET
STRING	TICKLE	URGENT	ZIPPER	ANATOMY	BARBELL
STRIVE	TIMBER	USEFUL	ZODIAC	ANCIENT	BARGAIN
STROBE	TISSUE	UTMOST	ABANDON	ANDROID	BAROQUE
STROLL	TOFFEE	UTOPIA	ABDOMEN	ANGUISH	BARRIER
STRONG	TOMATO	VACANT	ABILITY	ANIMATE	BATTERY
STRUCK	TONGUE	VACATE	ABOLISH	ANNUITY	BEANBAG
STUCCO	TONSIL	VACUUM	ABSENCE	ANOMALY	BEARING
STUDIO	TOPEKA	VALLEY	ACADEMY	ANOTHER	BECAUSE
STURDY	TOPPLE	VANISH	ACCLAIM	ANSWERS	BEDPOST
SUBDUE	TOUCAN	VANITY	ACCOUNT	ANTENNA	BEDROCK
SUBLET	TOWARD	VELVET	ACHIEVE	ANTIQUA	BEEHIVE
SUBMIT	TRANCE	VENDOR	ACQUIRE	ANTONYM	BELATED
SUBTLE	TRAVEL	VERIFY	ACREAGE	ANXIETY	BELLBOY
SUBURB	TREATY	VERTEX	ACROBAT	ANXIOUS	BENEATH
SUBWAY	TREMOR	VESSEL	ACTRESS	ANYBODY	BENEFIT
SUDDEN	TRENCH	VIALE	ADDRESS	APOLOGY	BEQUEST
SUMMER	TRIVIA	VICTOR	ADJOURN	APPAREL	BESIDES
SUMMIT	TROPHY	VIOLET	ADMIRAL	APPEASE	BESIEGE
SUNDAE	TUMBLE	VIOLIN	ADVANCE	APPLAUD	BETWEEN
SUNSET	TUNNEL	VIRTUE	ADVERSE	APPLIES	BICYCLE
SUPERB	TURKEY	VISION	AEROBIC	APPOINT	BILLION
SUPPER	TURNIP	VISUAL	AEROSOL	APRICOT	BIOLOGY
SUPPLY	TURTLE	VOLLEY	AFFLICT	AQUATIC	BISCUIT
SURREY	TUXEDO	VOLUME	AGAINST	ARCHAIC	BLANKET
SURVEY	TWELVE	VOYAGE	AGELESS	ARRANGE	BLATANT
SWITCH	TWENTY	WAFFLE	AGILITY	ARRIVAL	BLOSSOM
SYMBOL	TYCOON	WAITER	AGITATE	ARTICLE	BLUNDER
SYSTEM	TYPIST	WALLET	AILMENT	ARTISAN	BOBSLED
TACKLE	UMPIRE	WALNUT	AIMLESS	ASHAMED	BOLSTER
TACTIC	UNABLE	WALRUS	AIRFARE	ASPHALT	BONANZA
TAILOR	UNEASY	WANDER	AIRLINE	ASSURED	BONFIRE
TALENT	UNFAIR	WARDEN	AIRPORT	ASTOUND	BOOSTER
TAMPER	UNFOLD	WARMTH	ALCHEMY	ATHLETE	BOREDOM



BOULDER	CHRONIC	COOKIES	DISCUSS	FEATHER	GRIDDLE
BOUQUET	CIRCUIT	CORDIAL	DISMISS	FEATURE	GRIZZLY
BOWLING	CITIZEN	CORONET	DISPLAY	FEDERAL	GROCERY
BRACKET	CLASSIC	COUNTER	DISPUTE	FEELING	GUITARS
BREATHE	CLEANER	CURIOUS	DISTANT	FERTILE	GYMNAST
BREVITY	CLEANSE	CURTAIN	DISTILL	FICTION	HABITAT
BRISTLE	CLIMATE	CUSHION	DISTORT	FINANCE	HAIRCUT
BROTHER	CLUSTER	CYCLIST	DISTURB	FINESSE	HAIRPIN
BUFFALO	CLUTTER	CYCLONE	DIVERGE	FISSION	HALOGEN
BUILDER	COASTAL	DAMSELS	DIVERSE	FIXTURE	HAMMOCK
BULLPEN	COCONUT	DANCING	DIVIDED	FLANNEL	HAMSTER
CABARET	COLLECT	DECEIVE	DOLPHIN	FLATTEN	HARMONY
CABBAGE	COLLEGE	DECIBEL	DOORWAY	FLORIST	HARNESS
CABINET	COLLIDE	DECIMAL	DORMANT	FOOLISH	HARVEST
CABOOSE	COMBINE	DECLARE	DRESSER	FOREIGN	HEALTHY
CADENCE	COMFORT	DECLINE	DRIZZLE	FOREVER	HEATHER
CALCIUM	COMMAND	DEFAULT	DYNAMIC	FORGIVE	HEIRESS
CALORIE	COMMEND	DEFENSE	DYNASTY	FORMULA	HELPFUL
CALVARY	COMMENT	DEFLECT	EARDRUM	FORTUNE	HELPING
CALYPSO	COMMUNE	DEFROST	ECLIPSE	FORWARD	HERRING
CANTEEN	COMPACT	DEGREES	ECONOMY	FOUNDER	HERSELF
CANYONS	COMPANY	DELIGHT	EDITION	FRAGILE	HEXAGON
CAPITAL	COMPARE	DELIVER	EDUCATE	FRANTIC	HICKORY
CAPSULE	COMPASS	DENSITY	ELEGANT	FREEDOM	HISTORY
CAPTAIN	COMPETE	DENTIST	ELEMENT	FREEWAY	HOBBIES
CAPTION	COMPLEX	DEplete	ELEVATE	FREIGHT	HOLIDAY
CAPTIVE	COMPUTE	DEPOSIT	ELLIPSE	FRIGATE	HONESTY
CARAMEL	CONCEAL	DEPRIVE	ELUSIVE	FUNERAL	HOPEFUL
CAREFUL	CONCEDE	DERRICK	EMERALD	FURIOUS	HORIZON
CARIBOU	CONCEPT	DESCEND	EMOTION	GALLERY	HOSTESS
CARRIER	CONCERN	DESCENT	ENCLOSE	GARNISH	HOUSTON
CARTOON	CONCERT	DESERVE	ENQUIRY	GENERAL	HOWEVER
CASCADE	CONCISE	DESKTOP	ENTROPY	GENERIC	HUSBAND
CATALOG	CONDUCT	DESPITE	EQUINOX	GENUINE	HYDRANT
CAUTION	CONDUIT	DESSERT	ERRATIC	GEOLOGY	HYGIENE
CEILING	CONFIRM	DESTINY	ESSENCE	GESTURE	ICEBERG
CENTRAL	CONFORM	DEVELOP	EVENING	GIRAFFE	IMAGINE
CENTURY	CONFUSE	DEWDROP	EXAMINE	GLACIAL	IMITATE
CERTAIN	CONNECT	DIAGRAM	EXAMPLE	GLACIER	IMMENSE
CERTIFY	CONSENT	DIALECT	EXHAUST	GLASSES	IMPRESS
CHAMBER	CONSIST	DIAMOND	EXPENSE	GLIMMER	IMPRINT
CHANNEL	CONSOLE	DICTATE	EXPLAIN	GLIMPSE	IMPROVE
CHAPTER	CONSULT	DIFFUSE	EXPRESS	GOLFING	IMPULSE
CHARADE	CONSUME	DIGITAL	EXTREME	GONDOLA	INCLUDE
CHARIOT	CONTACT	DIGNIFY	FACTORS	GOODBYE	INDOORS
CHARTER	CONTAIN	DIGNITY	FACTORY	GORILLA	INERTIA
CHASSIS	CONTENT	DILEMMA	FACULTY	GRADUAL	INFLATE
CHATTER	CONTEST	DIPLOMA	FANFARE	GRAMMAR	INHABIT
CHEETAH	CONTEXT	DISCARD	FARTHER	GRANOLA	INHERIT
CHICKEN	CONTOUR	DISCERN	FASHION	GRAPHIC	INQUIRE
CHIMNEY	CONVENE	DISCORD	FATIGUE	GRAVITY	INSPECT

INSPIRE	MAJESTY	NEMESIS	PARSLEY	PREFACE	RAVIOLI
INSTALL	MANAGER	NEPTUNE	PARSONS	PRELUDE	READOUT
INSTANT	MANDATE	NERVOUS	PARTIAL	PREMIUM	REALIGN
INSTEAD	MANNERS	NETWORK	PARTNER	PRETEND	REALISM
INSTILL	MANSION	NEUTRAL	PASSAGE	PRETZEL	REALITY
IRONING	MARBLES	NOMINAL	PASSIVE	PREVAIL	REALIZE
ISOLATE	MARQUEE	NOMINEE	PASTURE	PREVENT	REALTOR
ITALICS	MASONRY	NONSTOP	PATIENT	PREVIEW	REASONS
ITEMIZE	MASSIVE	NOSTRIL	PATRIOT	PRIMARY	REBOUND
JEWELER	MAXIMUM	NOTABLE	PATTERN	PRINTER	REBUILD
JEWELRY	MEANING	NOTHING	PAUSING	PRIVATE	RECEIPT
JOGGING	MEASURE	NOURISH	PAYLOAD	PROBLEM	RECEIVE
JUGGLER	MEDIATE	NOVELTY	PEACOCK	PROCEED	RECITAL
JUNIPER	MEDICAL	NUMERAL	PELICAN	PROCESS	RECLAIM
JUSTIFY	MEETING	NURSERY	PENALTY	PROCURE	RECLINE
KETTLES	MENTION	OATMEAL	PERCENT	PRODUCE	RECOVER
KEYHOLE	MERCURY	OBSCURER	PERFECT	PRODUCT	RECRUIT
KINGDOM	MERMAID	OBSERVE	PERFORM	PROFILE	RECTIFY
KNEECAP	MESSAGE	OBVIOUS	PERFUME	PROGRAM	RECYCLE
LACKING	METEORS	OCTAGON	PERHAPS	PROJECT	REFEREE
LANDING	MIGRATE	OCTOBER	PERPLEX	PROMISE	REFINED
LANTERN	MILEAGE	OCTOPUS	PERSIST	PRONOUN	REFLECT
LASTING	MINERAL	ODYSSEY	PHANTOM	PROTECT	REFRAIN
LAUNDRY	MINIMAL	OFFENSE	PIANIST	PROTEIN	REFRESH
LECTURE	MINIMUM	OPERATE	PICCOLO	PROVERB	REFUSAL
LEISURE	MINUTES	OPINION	PICTURE	PROVIDE	REGIMEN
LENGTHY	MIRACLE	OPTICAL	PIGMENT	PROWESS	REGULAR
LENIENT	MISSILE	ORCHARD	PILLOWS	PRUDENT	REJOICE
LEOPARD	MISSING	OREGANO	PINBALL	PUDDING	RELAPSE
LETTUCE	MISSION	ORGANIC	PIONEER	PUMPKIN	RELEASE
LEXICON	MISTAKE	OSTRICH	PIRATES	PUPPIES	RELIEVE
LIBERTY	MITTENS	OUTDOOR	PITCHER	PURPOSE	REMARKS
LIBRARY	MIXTURE	OUTLOOK	PLANNED	PURRING	REMNANT
LICENSE	MOISTEN	OUTPOST	PLASTER	PURSUIT	REMODEL
LIONESS	MOLLUSK	OUTRAGE	PLASTIC	PUZZLED	RENEWAL
LIQUIDS	MONITOR	OUTSIDE	PLATEAU	PYRAMID	REPLACE
LITERAL	MONSOON	OVERALL	PLATOON	QUALIFY	REPLICA
LOBSTER	MOORING	OVERJOY	PLIABLE	QUALITY	REPTILE
LOGGING	MORaine	OXIDIZE	PLUMAGE	QUARTER	REQUEST
LOOMING	MORNING	PACIFIC	POLYGON	QUARTET	REQUIRE
LOTTERY	MUFFLER	PACKAGE	POMPOUS	QUICKLY	RESERVE
LOVABLE	MUNDANE	PADDOCK	POPCORN	QUIETLY	RESIDUE
LOYALTY	MUSICAL	PADLOCK	POPULAR	RACCOON	RESOLVE
LOZENGE	MUSKRAT	PAGEANT	PORTAGE	RADIATE	RESPECT
LUGGAGE	MUSTANG	PAJAMAS	PORTRAY	RADICAL	RESPOND
LULLABY	MUSTARD	PANCAKE	POSTAGE	RAILWAY	RESTFUL
MACHINE	MYSTERY	PANTHER	POSTURE	RAINBOW	RESTORE
MAGENTA	NARRATE	PARADED	POWERED	RAMBLER	RETREAT
MAGICAL	NATURAL	PARADOX	PRAIRIE	RANCHER	REUNION
MAGNIFY	NECKTIE	PARASOL	PRECEDE	RANKING	REVENUE
MAILBOX	NEITHER	PARKING	PREDICT	RAPPORT	REVERSE

REVOLVE	SEVENTY	STYLISH	TRICEPS	VULTURE	AIRPLANE
REWRITE	SEVERAL	SUBSIDE	TRILOGY	WALLABY	AIRSPEED
RHUBARB	SHAMPOO	SUCCEED	TRIUMPH	WARNING	AIRTIGHT
ROASTED	SHATTER	SUCCESS	TRIVIAL	WASHING	ALLOCATE
ROMANCE	SHELTER	SUGGEST	TROLLEY	WAYBILL	ALPHABET
ROOFTOP	SHERIFF	SUMMARY	TROUBLE	WAYWARD	ALTITUDE
ROOSTER	SHIMMER	SUNBURN	TRUMPET	WEALTHY	ALUMINUM
ROSEBUD	SHUDDER	SUNDIAL	TUESDAY	WEATHER	AMBITION
ROUTINE	SHUFFLE	SUNDOWN	TUITION	WEDDING	AMORTIZE
ROWBOAT	SHUTTER	SUNRISE	TYPHOON	WEEKEND	ANACONDA
ROYALTY	SIBLING	SUPPORT	TYPICAL	WELCOME	ANALYSIS
RUNNING	SIGNIFY	SUPPOSE	UNAWARE	WESTERN	ANCESTOR
SALVAGE	SILENCE	SUPREME	UNCOVER	WHETHER	ANECDOTE
SANDALS	SILICON	SURFACE	UNDERGO	WHISKER	ANNOUNCE
SANDBAG	SINCERE	SURPLUS	UNICORN	WHISPER	ANTELOPE
SAPLING	SITTING	SUSPEND	UNIFORM	WHISTLE	ANYTHING
SARCASM	SIXTEEN	SUSTAIN	UNKNOWN	WICHITA	APPENDIX
SARDINE	SKIRTED	SWALLOW	UNUSUAL	WILDCAT	APPETITE
SAUSAGE	SKYDIVE	SWEATER	UPFRONT	WINNING	APPRAISE
SAWDUST	SKYLARK	SWIFTLY	UPGRADE	WISHFUL	APPROACH
SAWFISH	SLEIGHT	SYMPTOM	UPSTAGE	WITHOUT	APPROVAL
SAWMILL	SLUMBER	SYNONYM	UTENSIL	WITNESS	APTITUDE
SCALLOP	SMARTLY	TARNISH	UTILITY	WORKDAY	AQUARIUM
SCAMPER	SNIPPET	TEACHER	VACANCY	WRANGLE	ARACHNID
SCANNER	SNORKEL	TEDIOUS	VACCINE	WRAPPER	ARGUMENT
SCARLET	SNUGGLE	TENSION	VALIANT	ZILLION	ARMCHAIR
SCENTED	SOARING	TERRACE	VAMPIRE	ZOOLOGY	AROMATIC
SCIENCE	SOCIETY	TERRAIN	VANILLA	ABDICATE	ARPEGGIO
SCOOTER	SOLDIER	TERRIER	VARIETY	ABRASION	ARRANGED
SCRATCH	SOMEDAY	TEXTILE	VARIOUS	ABSOLUTE	ARROGANT
SCREECH	SOPRANO	THEATER	VARNISH	ABUNDANT	ARTIFACT
SCRUPLE	SPANIEL	THERMAL	VEHICLE	ACADEMIC	ARTISTIC
SCUTTLE	SPARKLE	THIRSTY	VENTURE	ACCIDENT	ASSEMBLE
SEAFOOD	SPARROW	THOUGHT	VERANDA	ACCOLADE	ASSEMBLY
SEAGULL	SPECIAL	THROUGH	VERBOSE	ACCOUNTS	ASTERISK
SEAPORT	SPINACH	THUNDER	VERDICT	ACCURACY	ASTEROID
SEASIDE	SPINDLE	TOASTER	VERSION	ACCURATE	ASTONISH
SEAWEED	SPONSOR	TONIGHT	VERTIGO	ACOUSTIC	ATHLETIC
SECTION	SQUEEZE	TOOLBOX	VIBRANT	ACQUAINT	ATLANTIC
SEGMENT	STADIUM	TORNADO	VICTORY	ADDENDUM	ATTITUDE
SEISMIC	STAMINA	TOURISM	VILLAGE	ADDITION	ATTORNEY
SELFISH	STANDBY	TOURIST	VINEGAR	ADEQUATE	AUDIENCE
SELLOUT	STAPLER	TRACTOR	VINTAGE	ADHESIVE	AUTOMATE
SELTZER	STARTLE	TRAFFIC	VIRTUAL	ADJACENT	AVIATION
SERIOUS	STATION	TRAGEDY	VISIBLE	ADMONISH	BACHELOR
SERVANT	STELLAR	TRAILER	VISITOR	ADVOCATE	BACKDROP
SERVICE	STOMACH	TRANSIT	VITAMIN	AEROBICS	BACKFIRE
SESSION	STORAGE	TRAPEZE	VOLCANO	AFFINITY	BACKPACK
SETBACK	STRANGE	TREETOP	VOLTAGE	AFFLUENT	BACKSPIN
SETTING	STRETCH	TREMBLE	VOUCHER	AIRBORNE	BACKWARD
SETTLER	STUDENT	TRIBUTE	VOYAGER	AIRCRAFT	BACKYARD

BACTERIA	CHAMPION	DARKROOM	ECONOMIC	GALACTIC	INSULATE
BAGPIPES	CHARCOAL	DAUGHTER	EGGPLANT	GENEROUS	INTENDED
BALLPARK	CHARISMA	DAYDREAM	ELDORADO	GEODESIC	INTERCOM
BALLROOM	CHECKERS	DAYLIGHT	ELECTION	GERANIUM	INTEREST
BANISTER	CHEERFUL	DECEMBER	ELECTRIC	GLORIOUS	INTERIOR
BARBECUE	CHESTNUT	DECIPHER	ELEPHANT	GLOSSARY	INTERNAL
BARRACKS	CHIPMUNK	DECISION	ELEVATOR	GOLDFISH	INTERVAL
BASEBALL	CINNAMON	DEDICATE	EMPHASIS	GRACEFUL	INTREPID
BASEMENT	CITATION	DEFIANCE	EMPLOYEE	GRADUATE	INTRIGUE
BATHROOM	CLARINET	DEFINITE	EMPLOYER	GRAPHICS	INVESTOR
BEGINNER	CLEARING	DELEGATE	ENGINEER	GRATUITY	IRRIGATE
BEHAVIOR	CODEWORD	DELICATE	ENQUIRER	GREENERY	IRRITATE
BEVERAGE	COHERENT	DELIVERY	ENTIRETY	GUARDIAN	JEALOUSY
BIRTHDAY	COINCIDE	DESCRIBE	ENTRANCE	GUIDANCE	JETLINER
BLACKOUT	COLESLAW	DESERVED	ENVELOPE	HANDBAGS	JUDGMENT
BLIZZARD	COLLAPSE	DESIGNER	EPILOGUE	HANDSOME	JUVENILE
BLUEBIRD	COLONIAL	DIAGNOSE	EQUALITY	HARDWARE	KANGAROO
BOATYARD	COLOSSAL	DIAGONAL	EQUATION	HARDWOOD	KEROSENE
BONAFIDE	COMMERCE	DIALOGUE	ESTIMATE	HAYSTACK	KINDNESS
BOOKCASE	COMPLAIN	DIAMETER	EVALUATE	HEADACHE	KNAPSACK
BOOKMARK	COMPLETE	DILIGENT	EVENTFUL	HEREDITY	LACROSSE
BOOKSHOP	COMPOUND	DIMINISH	EVERYDAY	HERITAGE	LAMINATE
BOOKWORM	COMPRESS	DIPLOMAT	EXERCISE	HILLSIDE	LANDLORD
BOULDERS	COMPUTER	DIRECTOR	EXPEDITE	HISTORIC	LANDMARK
BOUNDARY	CONCERTO	DISAGREE	EXTERIOR	HOLIDAYS	LANGUAGE
BOUTIQUE	CONCLUDE	DISASTER	EXTERNAL	HOLOGRAM	LANTERNS
BRACELET	CONCRETE	DISCOUNT	EYEGLASS	HOMEWORK	LATITUDE
BROCHURE	CONFETTI	DISCOVER	FABULOUS	HONEYBEE	LAUGHTER
BUILDING	CONFLICT	DISGUISE	FAMILIAR	HOSPITAL	LAWRENCE
BULLETIN	CONFOUND	DISKETTE	FAREWELL	HUMIDITY	LEAPFROG
BULLSEYE	CONQUEST	DISPATCH	FEEDBACK	HUMILITY	LEFTOVER
BUNGALOW	CONSERVE	DISPENSE	FESTIVAL	HYACINTH	LEMONADE
CALCULUS	CONSIDER	DISSOLVE	FILAMENT	HYDROGEN	LENGTHEN
CALENDAR	CONSTANT	DISTANCE	FIREWOOD	HYSTERIA	LEVERAGE
CALLIOPE	CONSUMER	DISTINCT	FLAGPOLE	ILLUSION	LICORICE
CALORIES	CONTINUE	DISTRACT	FLAMINGO	IMPOSING	LIFEBOAT
CAMPAIGN	CONTRACT	DISTRICT	FLOTILLA	INCIDENT	LIFETIME
CAMPFIRE	CONTRAST	DIVIDEND	FLOURISH	INCREASE	LIGAMENT
CANISTER	CONVERGE	DIVISION	FOOTBALL	INDIRECT	LIKEWISE
CAPACITY	CONVERSE	DOCUMENT	FORCEFUL	INDUSTRY	LINOLEUM
CARDINAL	CONVINCE	DOMESTIC	FORECAST	INFINITE	LIPSTICK
CAREFREE	COOKBOOK	DOMINANT	FOUNTAIN	INFINITY	LITERACY
CARELESS	CORRIDOR	DOMINION	FRACTION	INFORMAL	LITERARY
CARNIVAL	CRITICAL	DOUBTFUL	FRAGMENT	INFUSION	LOCATION
CARRIAGE	CROSSBAR	DOUGHNUT	FRECKLES	INNOCENT	LOGISTIC
CASSETTE	CUCUMBER	DOWNHILL	FREQUENT	INNOVATE	LOOPHOLE
CATAPULT	CUFFLINK	DOWNTOWN	FRESHMAN	INSECURE	LOWLANDS
CATEGORY	CUPBOARD	DRAWBACK	FRICTION	INSIGNIA	LUMINOUS
CAUSEWAY	CUSTOMER	DRESSING	FRIENDLY	INSTANCE	LUNCHEON
CAUTIOUS	CYLINDER	DRIVEWAY	FRONTIER	INSTINCT	MACARONI
CEREMONY	DAFFODIL	DWELLING	FUNCTION	INSTRUCT	MACKEREL

MAGAZINE	MOTHBALL	OVERHAUL	POSSIBLE	RELATIVE	SECRETLY
MAGICIAN	MOTORCAR	OVERTIME	POSTCARD	RELAXING	SECURITY
MAINLAND	MOTORIZED	OVERTURE	POSTPONE	RELEVANT	SEDATION
MAINTAIN	MOUNTAIN	OVERVIEW	PRACTICE	RELOCATE	SEDIMENT
MAJESTIC	MOVEMENT	PAMPHLET	PRECINCT	REMEMBER	SEMESTER
MAJORITY	MULBERRY	PANORAMA	PRECIOUS	REMINDER	SENSIBLE
MANDOLIN	MULTIPLE	PARABOLA	PRESENCE	REPHRASE	SENTENCE
MANEUVER	MULTIPLY	PARADIGM	PRESSURE	REPLACED	SEPARATE
MANICURE	MUSHROOM	PARADISE	PRESTIGE	REPORTER	SEQUENCE
MANIFEST	MUSTACHE	PARAFFIN	PREVIOUS	REPUBLIC	SERENADE
MANIFOLD	NAMESAKE	PARAKEET	PRIMROSE	RESEARCH	SHAMROCK
MARATHON	NAUTILUS	PARALLAX	PRIORITY	RESIDENT	SHEPHERD
MARGINAL	NAVIGATE	PARALLEL	PRISTINE	RESOLVED	SHERBERT
MARIGOLD	NECKLACE	PARKLAND	PRODUCER	RESONANT	SHILLING
MARINADE	NEEDLESS	PARTICLE	PROGRESS	RESOURCE	SHIPMATE
MARINATE	NEIGHBOR	PASSPORT	PROPERLY	RESPONSE	SHIPMENT
MARITIME	NEWCOMER	PASSWORD	PROPERTY	RESTLESS	SHIPYARD
MARRIAGE	NEWSCAST	PATIENCE	PROSPECT	RESTRAIN	SHOELACE
MATERIAL	NICKNAME	PAVEMENT	PROTOCOL	RESTRICT	SHOPPING
MATTRESS	NINETEEN	PAVILION	PROVINCE	RESTROOM	SHOULDER
MAVERICK	NINETIES	PEACOCKS	PULLOVER	REVIEWER	SHOWBOAT
MEANTIME	NITROGEN	PEDESTAL	PUNCTUAL	REVISION	SHOWERED
MECHANIC	NOBILITY	PEDICURE	PURCHASE	RHAPSODY	SHOWROOM
MEDICINE	NOBLEMAN	PEGBOARD	QUADRANT	RHETORIC	SHUTDOWN
MEDIOCRE	NOMINATE	PENDULUM	QUANTIFY	ROMANTIC	SIDELINE
MERCHANT	NONSENSE	PENGUINS	QUANTITY	ROTATION	SIDESTEP
MERCIFUL	NORMALLY	PERCEIVE	QUESTION	SAILBOAT	SIDEWALK
MERIDIAN	NORTHERN	PERIODIC	QUICKEST	SAILFISH	SIDEWAYS
MERINGUE	NOTARIZE	PERMEATE	QUOTIENT	SANCTITY	SIMPLIFY
METALLIC	NOVEMBER	PEROXIDE	RADIATOR	SANDWICH	SIMULATE
METAPHOR	NUISANCE	PERSONAL	RAILROAD	SANITARY	SINGULAR
MIDNIGHT	OBEDIENT	PERSUADE	RAINCOAT	SAPPHIRE	SLIGHTLY
MIDPOINT	OBLIVION	PETULANT	RAINDROP	SATURATE	SLIPPERY
MINIMIZE	OBSOLETE	PHARMACY	RAINFALL	SAWTOOTH	SNOWBALL
MINSTREL	OBSTACLE	PHEASANT	RATIONAL	SCABBARD	SNOWSHOE
MISCHIEF	OCCASION	PHONETIC	RAVENOUS	SCAFFOLD	SOCIABLE
MISPLACE	ODOMETER	PHYSICAL	REACTION	SCENARIO	SOFTBALL
MISSPELL	OFFICIAL	PINAFORE	REAPPEAR	SCHEDULE	SOFTWARE
MOCCASIN	OFFSHORE	PINNACLE	REASSIGN	SCHOONER	SOLIDIFY
MODERATE	OMISSION	PINPOINT	REASSURE	SCISSORS	SOLITARY
MODESTLY	OPERATOR	PIONEERS	RECENTLY	SCORPION	SOLITUDE
MOISTURE	OPPONENT	PIPELINE	RECKLESS	SCRABBLE	SOLSTICE
MOLASSES	OPTIMISM	PLATFORM	RECREATE	SCRAMBLE	SOLUTION
MOLECULE	ORDINARY	PLATINUM	REDEFINE	SCRIBBLE	SOMBRERO
MOLEHILL	ORNAMENT	PLEASANT	REFERRAL	SCRUTINY	SOMEBODY
MONARCHY	OUTBOUND	POPULACE	REGAINED	SCULPTOR	SOMETIME
MONOPOLY	OUTBREAK	PORPOISE	REGARDED	SEABOARD	SONGBOOK
MONOTONE	OUTDOORS	PORRIDGE	REGIONAL	SEACOAST	SORCERER
MONUMENT	OUTFIELD	PORTABLE	REGISTER	SEAHORSE	SOUTHERN
MORTGAGE	OVERCAST	PORTRAIT	REINDEER	SEASHORE	SOUVENIR
MOSQUITO	OVERCOAT	POSITION	RELATION	SEASONAL	SPACIOUS

SPECIFIC	THIRTEEN	WARDROBE	ARMSTRONG	CHILDHOOD	EDUCATION
SPECTRUM	THURSDAY	WARRANTY	ARROGANCE	CHOCOLATE	EMERGENCY
SPLENDID	TOBOGGAN	WHATEVER	ARROWHEAD	CLASSROOM	EMOTIONAL
SPLENDOR	TOGETHER	WHEREVER	ARTICHOKE	CLEARANCE	ENCHANTED
SPOONFUL	TOLERANT	WINDFALL	ASPARAGUS	CLOCKWISE	ENCOUNTER
SPORADIC	TOLERATE	WINDMILL	ASSISTANT	COMMITTEE	ENDURANCE
SPRINKLE	TOMORROW	WIRELESS	ASTROLOGY	COMMUNITY	ENTERTAIN
SQUADRON	TORTILLA	WITHDRAW	ASTRONAUT	COMPANION	EQUIPMENT
SQUIRREL	TRANQUIL	WORKLOAD	ASTRONOMY	COMPETENT	ESTABLISH
STALLION	TRANSFER	WORKSHOP	ATTENTION	COMPONENT	ESTIMATES
STAMPEDE	TRANSMIT	WRANGLER	AUTHORITY	CONCIERGE	ETIQUETTE
STANDARD	TRAVERSE	YOURSELF	AUTOGRAPH	CONDITION	EVAPORATE
STANDOFF	TREASURE	YOUTHFUL	AUTOMATIC	CONFIDENT	EVERGREEN
STRAIGHT	TRESPASS	ZUCCHINI	AVAILABLE	CONFUSING	EVERYBODY
STRAINER	TRIANGLE	ABSURDITY	BACKWARDS	CONNECTED	EXCELLENT
STRATEGY	TRICYCLE	ACCORDION	BADMINTON	CONSCIOUS	EXCLUSIVE
STRENGTH	TRILLION	ACROBATIC	BALLERINA	CONSONANT	EXECUTIVE
STRUGGLE	TROMBONE	ADMIRABLE	BANDSTAND	CONSTRUCT	EXHAUSTED
STUBBORN	TROPICAL	ADMISSION	BAROMETER	CONTAINER	EXISTENCE
STUDIOUS	TURNOVER	ADVANTAGE	BINOCULAR	CONTENDER	EXPANSION
STUNNING	TWEEZERS	ADVENTURE	BIOGRAPHY	CONTINENT	EXPENSIVE
SUBMERGE	ULTIMATE	ADVERSARY	BIOSPHERE	COROLLARY	EXPERTISE
SUBTRACT	UMBRELLA	ADVERTISE	BLEACHERS	CRANBERRY	EXTENSION
SUBURBAN	UNBROKEN	AEROSPACE	BLINDFOLD	CRITICISM	FANTASTIC
SUCCINCT	UNCOMMON	AESTHETIC	BLUEBERRY	CROCODILE	FINGERTIP
SUITABLE	UNDERCUT	AFFIDAVIT	BLUEGRASS	DANDELION	FLOWERPOT
SUITCASE	UNDERDOG	AFFILIATE	BLUEPRINT	DANGEROUS	FLUCTUATE
SUNLIGHT	UNDERSEA	AFTERMATH	BOOKSTORE	DEDICATED	FORBIDDEN
SUNSHINE	UNDERWAY	AFTERNOON	BOOMERANG	DEFICIENT	FORESIGHT
SUPERIOR	UNICYCLE	ALABASTER	BOULEVARD	DELICIOUS	FORGETFUL
SURPRISE	UNIVERSE	ALBATROSS	BREAKFAST	DEMOCRACY	FORTUNATE
SURROUND	UNLIKELY	ALGORITHM	BRIEFCASE	DEPARTURE	FOUNTAINS
SUSPENSE	UNSETTLE	ALLIGATOR	BRILLIANT	DESPERATE	FRAMEWORK
SWIMSUIT	UNSTABLE	AMBIGUOUS	BROADCAST	DETECTIVE	FRANCHISE
SYMMETRY	UPCOMING	AMBITIOUS	BULLDOZER	DETERGENT	FREQUENCY
SYMPATHY	VACATION	AMPERSAND	CAFETERIA	DETERMINE	FURNITURE
SYMPHONY	VAGABOND	AMPHIBIAN	CALCULATE	DIAGNOSIS	GATHERING
SYNDROME	VALIDATE	AMPLIFIER	CALIBRATE	DIFFERENT	GENERATOR
TACTICAL	VALUABLE	AMPLITUDE	CAPACITOR	DIFFICULT	GENTLEMAN
TANGIBLE	VANGUARD	ANCESTRAL	CAPTIVATE	DIGNIFIED	GEOMETRIC
TAPESTRY	VARIABLE	ANCHOVIES	CARDBOARD	DIMENSION	GOLDENROD
TEASPOON	VARIANCE	ANONYMOUS	CARPENTER	DIRECTION	GRATITUDE
TEENAGER	VELOCITY	ANTHOLOGY	CARTWHEEL	DISAPPEAR	GREATBEND
TELECAST	VERTEBRA	ANTIQUITY	CASSEROLE	DISCOVERY	GREYHOUND
TELEGRAM	VERTICAL	APARTMENT	CENTIPEDE	DISPENSER	GROCERIES
TENDENCY	VICINITY	APOLOGIZE	CERTITUDE	DOCTORATE	GUIDELINE
TERMINAL	VIGNETTE	APPETIZER	CHALLENGE	DORMITORY	GYMNASIUM
TERRIBLE	VINEYARD	APPLIANCE	CHAMPAGNE	DUPLICATE	GYMNASTIC
TERRIFIC	VIRTUOSO	AQUEDUCTS	CHARACTER	EARTHWORM	HAILSTORM
TEXTBOOK	VITALITY	ARBITRARY	CHECKLIST	ECCENTRIC	HAMBURGER
THEMATIC	WAITRESS	ARGONAUTS	CHEMISTRY	EDITORIAL	HANDSHAKE

HAPPENING	LEISURELY	NUTRITION	PRIMITIVE	RESISTANT	SOLITAIRE
HAPPINESS	LIBRARIAN	OBEDIENCE	PRINCETON	RESONANCE	SOMETHING
HARMONICA	LIFESTYLE	OBLIGATED	PRINCIPAL	RESPECTED	SOURDOUGH
HEADLIGHT	LIGHTNING	OBSESSION	PRIVILEGE	RESTRAINT	SOVEREIGN
HEADPHONE	LIMELIGHT	OCCUPANCY	PROCESSED	RIVERVIEW	SPACESHIP
HEARTBEAT	LIMESTONE	OLFACTORY	PROFESSOR	ROADBLOCK	SPAGHETTI
HIBERNATE	LIMOUSINE	OPTOMETRY	PROJECTOR	SADDLEBAG	SPEARMINT
HIERARCHY	LIVESTOCK	ORCHESTRA	PROMENADE	SAFEGUARD	SPECTATOR
HIGHLANDS	LOCKSMITH	OVERBOARD	PROMOTION	SAGEBRUSH	SPOKESMAN
HIGHLIGHT	LONGEVITY	OVERWHELM	PROOFREAD	SANDPAPER	SPOTLIGHT
HISTORIAN	LUMINANCE	PALLADIUM	PROVISION	SATELLITE	SPRINKLER
HONEYCOMB	LUXURIOUS	PANTOMIME	PROXIMITY	SATISFIES	STABILITY
HONEYMOON	MACHINERY	PAPERWORK	PUBLISHER	SATURATED	STAINLESS
HOROSCOPE	MAGNITUDE	PARACHUTE	PUPPETEER	SAXOPHONE	STALEMATE
HORSEBACK	MANHATTAN	PARAGRAPH	QUADRUPLE	SCAPEGOAT	STARLIGHT
HORSESHOE	MARGARINE	PARAMETER	QUALIFIED	SCARECROW	STATEMENT
HOURLASS	MARKETING	PARCHMENT	QUALITIES	SCORECARD	STEAMBOAT
HOUSEHOLD	MARMALADE	PARTITION	QUARTERLY	SCRIBBLER	STOCKINGS
HOUSEWORK	MARVELOUS	PARTRIDGE	QUICKSAND	SCRIMMAGE	STOPWATCH
HURRICANE	MCPHERSON	PASSENGER	QUOTATION	SCULPTURE	STOREROOM
HYDRAULIC	MEANWHILE	PATCHWORK	RACETRACK	SECESSION	STRATEGIC
HYPNOTIZE	MEDALLION	PEACETIME	RASPBERRY	SECLUSION	STREETCAR
IDENTICAL	MENAGERIE	PENINSULA	REARRANGE	SECRETARY	STRUCTURE
IMAGINARY	MESSENGER	PEPPERONI	REASONING	SECTIONAL	STYROFOAM
IMMEDIATE	METEORITE	PERENNIAL	RECEPTION	SEEDLINGS	SUBMARINE
IMPATIENT	MEZZANINE	PERISCOPE	RECIPIENT	SEEMINGLY	SUBSCRIBE
IMPLEMENT	MICROFILM	PERMANENT	RECOGNIZE	SELECTION	SUBSTANCE
IMPORTANT	MICROWAVE	PERPETUAL	RECOMMEND	SEMANTICS	SUNFLOWER
IMPROMPTU	MIDSUMMER	PERSEVERE	RECONCILE	SEMICOLON	SUPERVISE
IMPROVISE	MILLIPEDE	PETROLEUM	RECORDING	SENSATION	SURRENDER
IMPULSIVE	MILLSTONE	PHENOMENA	RECTANGLE	SENSITIVE	SYMBOLISM
INAUGURAL	MINCEMEAT	PHYSICIAN	RECYCLING	SENTIMENT	TANGERINE
INCENTIVE	MINIATURE	PINEAPPLE	REDUNDANT	SERIOUSLY	TECHNICAL
INCLUSION	MISTLETOE	PISTACHIO	REFERENCE	SHEEPSKIN	TECHNIQUE
INCORRECT	MODERNIZE	PLENTIFUL	REFLECTOR	SHELLFISH	TELEGRAPH
INFLUENCE	MONOLOGUE	PLUTONIUM	REGARDING	SHIPBOARD	TELEPHONE
INGENIOUS	MOONLIGHT	PNEUMATIC	REGULATOR	SHIPSHAPE	TELESCOPE
INGENUITY	MULTIPLEX	POLLUTION	REHEARSAL	SHIPWRECK	TEMPORARY
INSERTION	MUNICIPAL	POLYESTER	REINFORCE	SIDEBURNS	TENTATIVE
INSURANCE	MYTHOLOGY	PORCELAIN	REITERATE	SIGNATURE	TERRITORY
INTEGRITY	NECESSARY	PORCUPINE	REJECTION	SIMILARLY	TESTIMONY
INVENTIVE	NECESSITY	POTASSIUM	RELEVANCE	SIMULATED	THEREFORE
INVISIBLE	NEGOTIATE	POTENTIAL	RELUCTANT	SINCERELY	THESAURUS
IRREGULAR	NEWSPAPER	POTPOURRI	REMOVABLE	SITUATION	THRESHOLD
JELLYFISH	NIGHTFALL	PRECEDENT	RENEWABLE	SKETCHPAD	TIMETABLE
KNOWLEDGE	NOCTURNAL	PREEMPTED	REPRESENT	SLAPSTICK	TOOTHPICK
LABYRINTH	NONLINEAR	PRESENTLY	REQUISITE	SNOWFLAKE	TOUCHDOWN
LANDOWNER	NORTHEAST	PRESIDENT	RESEMBLES	SOCIALIZE	TRADEMARK
LANDSCAPE	NORTHWEST	PRETENDER	RESERVOIR	SOCIOLOGY	TRADITION
LAZYGONES	NOSTALGIA	PREVALENT	RESIDENCE	SOLICITOR	TRANSFORM
LEGENDARY	NUMERATOR	PRIMARILY	RESILIENT	SOLILOQUY	TRANSLATE

TRANSPORT	WALLPAPER				
TURQUOISE	WAREHOUSE				
UNANIMOUS	WEDNESDAY				
UNCERTAIN	WHIRLPOOL				
UNDECIDED	WHOLESALE				
UNDERLINE	WHOLESOME				
UNDERPASS	WONDERFUL				
UNIVERSAL	WORKHORSE				
UNWILLING	WORLDWIDE				
UTILITIES	WRESTLING				
VALENTINE	YARDSTICK				
VARIATION	YESTERDAY				
VEGETABLE	YOUNGSTER				
VENERABLE					
VENTILATE					
VERSATILE					
VESTIBULE					
VICTORIAN					
VIDEOTAPE					
VOLUNTARY					
VOLUNTEER					

TRD-200400120  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: January 8, 2004

TRD-200400195  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 13, 2004

## Public Utility Commission of Texas

### Notice of Application for Certificate of Convenience and Necessity in Jack and Wise Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on January 8, 2004, for a certificate of convenience and necessity (CCN) in Jack and Wise Counties, Texas.

Docket Style and Number: Application of Brazos Electric Power Cooperative, Inc. (BEPC) for a Certificate of Convenience and Necessity for a Single Circuit 138-kV Transmission Line in Jack and Wise Counties, Texas. Docket Number 29020.

The Application: The proposed project would connect BEPC's planned generation plant near the community of Joplin in Jack County to its proposed Wise County Switch station near Bridgeport through the construction of approximately 20 miles of 138-kV transmission line. The project is designated the Jack County Generation Plant to Wise County Switch. The right-of-way width for this project will be approximately 70 feet. The estimated cost for the project is \$7,531,850.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by February 22, 2004, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 29020.

### Notice of Application for Certificate of Convenience and Necessity in Liberty County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on January 9, 2004, for a certificate of convenience and necessity in Liberty County, Texas.

Docket Style and Number: Application of Entergy Gulf States, Inc. (EGSI) for a Certificate of Convenience and Necessity for a 138-kV Transmission Line in Liberty County, Texas. Docket Number 28938.

The Application: EGSI proposes to install a new 138-kV transmission line between the existing Dayton Substation and the existing Gordon Substation, in the vicinity of Dayton, within southwestern Liberty County, Texas. This project is designated the Dayton-Gordon 138-kV Transmission Line. Depending on the final route selected, the proposed line would have a total length of approximately 9 to 13 miles. The line would be constructed within a right-of-way of variable width up to 100 feet. The estimated total cost of the proposed project is \$10,370,000 for transmission facilities and \$697,000 for substation facilities.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by February 23, 2004, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 28938.

TRD-200400194



Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 13, 2004

◆ ◆ ◆  
**Notice of Application for Good Cause Exception to P.U.C.  
Substantive Rule 25.341(3)(F)**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on December 31, 2003 for waiver from P.U.C. Substantive Rule §25.341(3)(F) regarding the definition of "competitive energy services."

Docket Title and Number: Application of AEP Texas Central Company and Valero Refining-Texas, LP for Good Cause Exception to P.U.C. Substantive Rule §25.341(3)(F). Docket Number 29119.

The Application: AEP Texas Central Company (AEP-TCC) and Valero Refining-Texas, LP (Valero) (collectively, Applicants or the Companies) stated that good cause exist for the commission to grant a narrow exception to the competitive energy service rule to allow Valero to temporarily continue its lease arrangement with AEP-TCC at Valero's petroleum refinery located near Corpus Christi, Nueces County, Texas. Applicants advised that the requested exception will allow Valero the time it needs to complete the construction of a new 138 kV substation which will provide Valero with increased capacity to meet its projected load growth and will also benefit AEP-TCC's system by providing additional capacity to meet the growth needs of other 69 kV customers on AEP-TCC's system.

Applicant's stated that the facilities that are the subject of this proceeding are currently leased to Valero under a good cause exception to the competitive energy services rules granted in Docket Number 22352, *Application of Central Power and Light Company for Approval of Unbundled Cost of Service Rate Pursuant to PURA §39.201 and P.U.C. Substantive Rule §25.344*. The Applicants advised that given the significant lead time necessary for Valero to procure the necessary equipment and materials and to construct the 138 kV substation, the new substation will not be completed prior to the expiration of the existing good cause exception, which ended December 31, 2003. In this application, the Companies request an extension of the existing good cause exception solely to allow AEP-TCC to continue leasing the facilities to Valero until its new 138 kV substation is completed, in service, and all applicable loads have been transferred, or until December 31, 2005, whichever is earlier.

On or before February 23, 2004, persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 29119.

TRD-200400190  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 13, 2004

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**Notice of Application for Waiver of Requirements to Provide  
Transmission of at Least 14,400 Bits of Data Per Second**

Notice is given to the public that an application was filed with the Public Utility Commission of Texas (commission) on December 17, 2003, for waiver of the requirements of commission substantive rule §26.54(b)(3) and (b)(4)(C), regarding one-party line service and voice band data, for the Falcon Exchange in Zapata County.

**Docket Number and Title:** Docket Number 29071, *Application of Border to Border Communications for an Extension of Waiver from Requirements in PUC Substantive Rule §25.54(b)(3) and PUC Substantive Rule §26.54(b)(4)(C)*.

**Application:** Border to Border Communications, Incorporated (Border to Border or Company) requests that the commission extend the waiver previously granted on December 18, 2001, in Docket Number 23267, *Application of Border to Border Communications, Incorporated for Waiver of Requirements in PUC Subst. R. §26.54(b)(3) and §26.54(b)(4)(C)*. The waiver granted Company a waiver of the requirement to provide all subscribers with a minimum transmission speed of at least 14,400 bits of data per second (14.4 kbps) for 61 customers in the Falcon Exchange and served through equipment which does not meet the data speed required. The Company was granted a two-tiered waiver from the requirement to upgrade all voice grade circuits to meet the 14.4 kbps data transmission standard until January 1, 2006, provided that from the period beginning December 31, 2003 to December 31, 2005, the Company upgraded individual voice grade circuits upon request. Border to Border advised that unlicensed fixed wireless spectrum technology capable of providing both voice and data service has not developed as expected and the Company therefore seeks an extension of its original waiver such that it is not required to upgrade individual switched voice circuits upon customer request until December 31, 2005. Border to Border stated that as an alternative to upgrading individual switched voice circuits upon request, beginning January 1, 2004, the Company will offer its high speed wireless Internet service to any qualifying customer within the operating range of the wireless customer premises equipment. In addition, the Company requests that the commission grant a permanent waiver from §26.54(b)(3) for any customer who elects to retain Basic Exchange Telephone Radio Service (BETRS). The Company also request the commission grant a temporary waiver the requirements of §26.54(b)(3) anytime the Company must construct facilities to new customers who are more than one-half mile from the company's existing fiber optic facilities.

**Comments:** Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 29071.

TRD-200400110  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 7, 2004

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**Notice of Application for Waiver of Requirements to Provide  
Transmission of at Least 14,400 Bits of Data Per Second**

Notice is given to the public that an application was filed with the Public Utility Commission of Texas (commission) on December 17, 2003, for waiver of the requirements of commission substantive rule §26.54(b)(3), regarding one-party line service and voice band data, for the Vinegarroon Exchange.

**Docket Number and Title:** Docket Number 29073, *Application of Southwest Texas Telephone Company for Waiver of Requirements in PUC Substantive Rule §25.54(b)(3)*.

**Application:** Southwest Texas Telephone Company (STTC) requests that the commission extend the waiver previously granted on May 23, 2003, in Docket Number 27002, *Application of Southwest Texas Telephone Company for Waiver of Requirements in PUC Subst. R. §26.54(b)(3)*. The waiver granted STTC a waiver of the requirement to provide all subscribers with a minimum transmission speed of at least 14,400 bits of data per second (14.4 kbps) by the end of 2002 for 89 customers in the Vinegarroon exchange and served through equipment which does not meet the data speed required. In addition, STTC received a waiver from §26.54(b)(4)(C)(i) and (ii) which requires that, upon request by a customer, a company will upgrade the customers switched voice circuits at no charge to allow transmission speed of at least 14.4 kbps. STTC stated in its request that it has made substantial progress in evaluating new wireless technologies and products that will make it possible to upgrade customers but that it needs additional time for the orderly deployment and evaluation of a mix of wireless and wireline technologies in the Vinegarroon exchange. STTC advised that the customers affected by the waiver have the opportunity to receive high-speed satellite internet service at the wholesale rate of \$39. Therefore, STTC requests an extension of its waiver until December 31, 2004.

**Comments:** Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 29073.

TRD-200400111  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 7, 2004

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**Notice of Application for Waiver of Requirements to Provide Transmission of at Least 14,400 Bits of Data Per Second**

Notice is given to the public that an application was filed with the Public Utility Commission of Texas (commission) on December 18, 2003, for waiver of the requirements of commission substantive rule §26.54(b)(3) and (b)(4)(C), regarding one-party line service and voice band data, for the Alamito, Big Canyon, Calamity Creek, Comstock, Langtree, Sanderson, Sheffield, and Six Shooter exchanges.

**Docket Number and Title:** Docket Number 29086, *Application of Big Bend Telephone Company, Incorporated for an Extension of Waiver from Requirements in PUC Substantive Rule §25.54(b)(3) and PUC Substantive Rule §26.54(b)(4)(C)*.

**Application:** Big Bend Telephone Company, Inc. (Big Bend or Company) requests that the commission extend the waiver previously granted on December 17, 2001, in Docket Number 23269, *Application of Big Bend Telephone Company, Incorporated for Waiver of Requirements in PUC Subst. R. §26.54(b)(3) and §26.54(b)(4)(C)*. The waiver granted Company a waiver of the requirement to provide all subscribers with a minimum transmission speed of at least 14,400 bits of data per second (14.4 kbps) for 655 customers in the Alamito, Big Canyon, Calamity Creek, Comstock, Langtree, Sanderson, Sheffield, and Six Shooter exchanges and served through equipment which does not meet the data speed required. The Company was granted a waiver

from the requirement to upgrade all voice grade circuits to meet the 14.4 kbps data transmission standard upon customer request until December 31, 2003. Big Bend advised that unlicensed fixed wireless spectrum technology capable of providing both voice and data service has not developed as expected and the Company therefore seeks an extension of its original waiver such that it is not required to upgrade individual switched voice circuits upon customer request until December 31, 2005. Big Bend stated that as an alternative to upgrading individual switched voice circuits upon request, the Company initiated a cooperative arrangement with Big Canyon TV in Alpine, Texas in June 2001 to offer a two-way satellite Internet service. The Company offers twelve months no interest financing for basic installation and hardware costs to any subscriber served through Basic Exchange Telephone Radio Service (BETRS) equipment who wishes to receive two-way satellite Internet service from Big Canyon TV. In addition, Big Bend requests that the Commission grant a permanent waiver from the requirements of §26.54(b)(3) for any customer who elects to retain BETRS service.

**Comments:** Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 29086.

TRD-200400112  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 7, 2004

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**Notice of Application for Waiver of Requirements to Provide Transmission of at Least 14,400 Bits of Data Per Second**

Notice is given to the public that an application was filed with the Public Utility Commission of Texas (commission) on December 29, 2003, for waiver of the requirements of commission substantive rule §26.54(b)(3) and (b)(4)(C), regarding one-party line service and voice band data, for the Guadalupe Peak and Mile High exchanges.

**Docket Number and Title:** Docket Number 29107, *Application of Dell Telephone Cooperative, Incorporated for an Extension of Waiver from Requirements in PUC Substantive Rule §25.54(b)(3) and PUC Substantive Rule §26.54(b)(4)(C)*.

**Application:** Dell Telephone Cooperative, Incorporated (Dell or Company) requests that the commission extend the waiver previously granted on December 17, 2001, in Docket Number 23286, *Application of Dell Telephone Cooperative, Incorporated for Waiver of Requirements in PUC Subst. R. §26.54(b)(3)*. The Company was granted a waiver of the requirement to provide all subscribers with a minimum transmission speed of at least 14,400 bits of data per second (14.4 kbps) for 63 customers in the Guadalupe Peak and Mile High exchanges served through equipment which does not meet the data speed required until December 31, 2003. The Company was also granted a waiver until December 31, 2003 from the requirement to upgrade all voice grade circuits to meet the 14.4 kbps data transmission standard upon customer request. Dell advised that it needs additional time to evaluate the wireless technologies that meet the commission's data speed requirement and to identify, purchase, and install a new wireless system. Therefore, Dell requests an extension of the waivers granted in Docket Number 23286 until December 31, 2004. The Company stated that as an alternative it deployed True-wave Satellite Internet

Service in June 2003 to provide broadband data service to customers in the Basic Exchange Telephone Radio Service (BETRS) service area.

**Comments:** Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 29107.

TRD-200400113

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: January 7, 2004



### Notice of Form Change for Low-Income Telephone and Electric Utility Programs

The Public Utility Commission of Texas (commission) provides public notice of proposed changes to the form for the low-income telephone and electric discount program. The form to apply for the Low-Income Telephone and Electric Utility Program to receive telephone and electric discounts is being changed to accommodate the changes to P.U.C. Substantive Rule §25.454, regarding the Rate Reduction Program and P.U.C. Substantive Rule §26.412, Regarding Lifeline and Link Up Services, For Low-Income Discount Administrator. Changes to the form include the addition of more specific directions on filling out the form to apply for telephone and/or electric discounts, the addition of income-based and program-based eligibility documentation requirements, and the reorganization of the form. Additionally, check boxes for Federal Public Housing Assistance and the Low-Income Energy Assistance Program have been added to allow a customer to enroll for the telephone discount only. The revised form may be viewed and downloaded through AIS under Project Number 24116, *Project to Implement the System Benefit Fund*, or from the commission website at <http://www.puc.state.tx.us/electric/projects/24116/24116.cfm>.

Persons wishing to comment on the proposed form should file comments in Central Records by 3:00 p.m., Friday, February 6, 2004, under Project Number 24116. Questions regarding this notice should be directed to Lauren Clark, Retail Market Analyst, Electric Division, at (512) 936-7401 or through email at [lauren.clark@puc.state.tx.us](mailto:lauren.clark@puc.state.tx.us). Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989.

TRD-200400223

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: January 14, 2004



### Public Notice of Amendment to Interconnection Agreement

On January 12, 2004, Southwestern Bell Telephone, LP d/b/a SBC Texas and Signatel Telephone Corp., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supp. 2004)

(PURA). The joint application has been designated Docket Number 29153. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29153. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 12, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29153.

TRD-200400233

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: January 14, 2004



### Public Notice of Amendment to Interconnection Agreement

On January 12, 2004, Southwestern Bell Telephone, LP d/b/a SBC Texas and Z-Tel Communications, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United

States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supp. 2004) (PURA). The joint application has been designated Docket Number 29152. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29152. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 12, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29152.

TRD-200400234  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 14, 2004



#### Public Notice of Amendment to Interconnection Agreement

On January 12, 2004, Southwestern Bell Telephone, LP d/b/a SBC Texas and Direct Telephone Company, Inc., collectively referred to as

applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supp. 2004) (PURA). The joint application has been designated Docket Number 29154. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29154. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 12, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29154.

TRD-200400236  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 14, 2004



**Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215**

Notice is given to the public of the filing, on January 6, 2004, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on January 16, 2004.

Docket Title and Number. Southwestern Bell Telephone, LP d/b/a SBC Texas's Application for Approval of LRIC Study for Plexar Simultaneous Ring Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 29139.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 29139. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200400193

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: January 13, 2004



**Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215**

Notice is given to the public of the filing, on January 9, 2004, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or around January 19, 2004.

Docket Title and Number. Verizon Southwest Application for Approval of LRIC Study for Flexgrow West Enhancements Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 29149.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 29149. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200400212

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: January 13, 2004



**Public Notice of Interconnection Agreement**

On January 9, 2004, Mid-Plains Rural Telephone Cooperative, Inc. and Amarillo CellTelco d/b/a Cellular One of Amarillo, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supp. 2004) (PURA). The joint application has been designated Docket Number 29147. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29147. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 6, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29147.

TRD-200400192

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: January 13, 2004



**Public Notice of Interconnection Agreement**

On January 9, 2004, Mid-Plains Rural Telephone Cooperative, Inc. and NPCR, Inc. d/b/a Nextel Partners, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supp. 2004) (PURA). The joint application has been designated Docket Number 29148. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29148. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 6, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29148.

TRD-200400191  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 13, 2004

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Public Notice of Interconnection Agreement

On January 12, 2004, Southwestern Bell Telephone, LP d/b/a SBC Texas and ITC^DeltaCom Communications, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supp. 2004) (PURA). The joint application has been designated Docket Number 29151. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29151. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 12, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29151.

TRD-200400235  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 14, 2004

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**Texas Department of Transportation**

## Notice of Intent - Environmental Impact Statement

Pursuant to 43 TAC §2.43(e)(3), the Texas Department of Transportation (TxDOT) is issuing this notice to advise the public that a Tier One Environmental Impact Statement (EIS) will be prepared for the proposed extension of Interstate Highway 69 (I-69) from near Shreveport, Louisiana, and Texarkana, Texas, to the Texas-Mexico international border near Laredo and the Lower Rio Grande Valley. The proposed I-69 facility is being evaluated as an element of the National High Priority Corridor 18 and Corridor 20 systems. In addition, I-69 is being evaluated as a priority segment of the Trans-Texas Corridor system as outlined in the Trans-Texas Corridor Plan (TTCP) adopted by the Texas Transportation Commission (commission) in June 2002. As currently envisioned, the proposed Trans-Texas Corridor system could include lanes for passenger vehicles, separate lanes for trucks, rail lines and a utility corridor.

Using a tiered approach, TxDOT, in cooperation with the Federal Highway Administration (FHWA), will prepare a Tier One EIS on a proposal to identify a corridor for ultimate construction of I-69 as a controlled access, multimodal transportation facility. This project responds to the need for a strategic, high priority highway serving the east-central United States, as outlined in the national High Priority Corridors 18 and 20 studies defined by Congress in the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA), as extended in 1993 and 1995, and the 1998 Transportation Equity Act for the 21st Century (TEA-21). I-69 is planned to be a continuous north-south corridor linking Canada, the United States, and Mexico. The proposed facility would also serve as a priority segment of the statewide Trans-Texas Corridor system as outlined in the June 2002 plan adopted by the commission entitled "Crossroads of the Americas: Trans-Texas Corridor Plan."

As currently envisioned, the Trans-Texas Corridor system would potentially include highway lanes for passenger vehicles; separate lanes for trucks; and six rail lines (one in each direction serving freight, commuter and high speed passenger traffic). The width of the proposed I-69 corridor would be approximately 1,000 to 1,200 feet including a 200-foot wide utility zone that could ultimately accommodate lines for water, petroleum, natural gas, electricity, data, and other commodities. The overall length of the corridor is approximately 1,000 miles but the final length is dependent upon the location decision.

TxDOT anticipates utilizing a combination of traditional and innovative financing options to fund construction of the proposed project. These options include state and federal transportation funds, public/private partnerships, and tolling.

The Tier One EIS will focus on broad issues and generally address the national, regional and area-wide implications of the major alternatives. The Tier One study will not authorize construction of any element of the proposed facility. Anticipated decisions to be made during the Tier One study include evaluation of the "no action" alternative; identification of a preferred corridor location where the I-69 highway element and the remaining modal elements of the Trans-Texas Corridor can be coincidental and where they will be separated; refinement of modal concepts; identification of segments of independent utility (to be studied further in subsequent tiers); identification of areas that may warrant corridor preservation; and development of a plan for further action. Documents prepared during subsequent tiers would rely upon and utilize the environmental analysis in the Tier One study. As a priority element of the national I-69 corridor initiative, the proposed facility would address interstate and international transportation needs, goals and objectives.

After the Tier One decision has been made, TxDOT, in cooperation with FHWA, will proceed with the I-69 highway component by performing specific facility project level studies in a Tier Two decision process. TxDOT would cooperate with other federal, state and/or local

agencies in pursuing specific facility project decisions for the non-highway modes after the Tier One decision.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to private organizations, individuals and stakeholders who have previously expressed or are known to have an interest in this proposal. Public meetings and public hearings will be held during appropriate phases of the project development process. Public notices will be given of the date, time, and location of each.

A second priority segment of the Trans-Texas Corridor system, generally paralleling Interstate Highway 35 and potentially including portions of the Interstate Highway 37 and I-69 priority segments to the extent necessary for connectivity and financing purposes (TTC-35), is also under development and a Tier One Corridor EIS will be developed for that project. A separate Notice of Intent will be published by TxDOT for that environmental impact statement.

Although the I-69 and TTC-35 facilities are separate and distinct actions, with each having logical termini and independent utility, each of the proposed facilities share the need to terminate along the Texas-Mexico International Border, resulting in overlap of study areas. In the overlapping areas, care will be taken to closely coordinate the development of the two separate facilities in order to minimize duplication of effort and inconvenience to the public, resource agencies, and other stakeholders. Both projects will be considered in the cumulative impacts analysis for each of the facilities.

To ensure that the full range of issues related to this proposed action is addressed and all significant concerns are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Tier One EIS should be directed to Doug Booher, Environmental Manager, Texas Turnpike Authority Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701. Mr. Booher can be reached by telephone at (512) 936-0980.

TRD-200400237

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: January 14, 2004



## Request for Comments on Possible Environmental Rule Amendments

This is a notice of opportunity to comment on possible amendments to the Texas Department of Transportation (TxDOT) environmental rules found at 43 Texas Administrative Code Chapter 2, Subchapter C. TxDOT is issuing this notice to advise the public that it will be considering amendments to its environmental rules to address new legislation and to make other appropriate revisions or clarifications. The purpose of these revisions would be to include provisions resulting from changes to the existing law that the Texas Legislature made during the 78th Legislative Session, 2003. Among the recent legislative enactments that may make rulemaking necessary or appropriate is House Bill 3588, which included provisions for the Trans Texas Corridor and added other modes of transportation (e.g., rail) to those previously administered by TxDOT. It will also be a goal of any amendments to make the rules more amenable for use by TxDOT and other entities that are either obligated to comply with particular provisions or that wish to use the TxDOT environmental rules as a guide or standard. These revisions would also be intended to enhance the effectiveness of the rules in achieving their purposes, one of which is to ensure meaningful public involvement and input for transportation projects that are being considered.

In accordance with the Transportation Code, a public hearing concerning TxDOT's environmental rules was previously held on December 18, 2003. A copy of information provided at the December 18, 2003, public hearing regarding the environmental rules may be obtained through the contact information provided in this notice.

TxDOT is soliciting additional input about its environmental rules from the public. The objective of this published notice is to provide members of the public and entities that may be affected by the rules with an additional opportunity to submit early comments and suggestions about potential amendments to TxDOT's environmental rules. To ensure that all significant issues are identified and addressed, comments and suggestions are invited from all interested parties. Before any changes to these rules are made, notice of proposed amendments or new rules will be published in the *Texas Register* and an opportunity to comment on any proposed amendments will be provided in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

**Deadline for Comments/Agency Contact:** Comments or questions concerning this notice and possible amendment of TxDOT's environmental rules should be directed to Dianna F. Noble, P.E., Texas Department of Transportation, Environmental Affairs Division, 125 E. 11th Street, Austin, Texas 78701; phone 512-416-2734. In any correspondence or communication regarding this matter, please be sure to conspicuously include the statement that it is "Regarding Proposed Revisions to the TxDOT Environmental Rules." Deadline for comments is February 23, 2004.

TRD-200400238  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: January 14, 2004



#### Request for Proposal for Aviation Engineering Services

The City of Olney, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division, will solicit and receive proposals for the professional aviation engineering design services described.

**Airport Sponsor:** City of Olney, Olney Municipal Airport. TxDOT CSJ No.:0403OLNEY. Scope: Provide engineering/design services to rehabilitate and mark runway 17-35, 4-22, 13-31; and taxiways; reconstruct the hangar access taxiway and the terminal parking apron; repair storm drain inlet; and install perimeter fencing at the Olney Municipal Airport.

The HUB goal is set at 8%. TxDOT Project Manager is Steve Roth.

To assist in your proposal preparation the most recent airport layout plan, and 5010 drawing are available online by selecting "Olney Municipal Airport" at:

[www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm)

Interested firms shall utilize the Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

<http://www.dot.state.tx.us/avn/avn550.doc>

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Proposals shall

be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (**Note: The form is an MS Word template.**)

Please note the new format for submission of a proposal for these services. Qualifications statements will not be utilized for this project. This will be a submission of a limited proposal for engineering services. The form AVN-550 must be utilized. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page.

Seven unfolded copies of Form AVN 550 must be postmarked by U. S. Mail by midnight February 12, 2004 (CDST): Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on February 13, 2004; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. February 13, 2004 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members.

The final selection by the sponsor's committee will generally be made following the completion of review of proposals and/or interviews. The committee will review all proposals and rate and rank each.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, at 1-800-68-PILOT (74568) or Steve Roth, Project Manager, at 1-325-676-6851, for technical questions.

TRD-200400215  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: January 14, 2004



#### Request for Proposal for Aviation Engineering Services - Denton Municipal Airport

The City of Denton, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division will solicit and receive proposals for professional aviation engineering design services described.

**Airport Sponsor:** City of Denton, Denton Municipal Airport. TxDOT CSJ No.:0418DNTON Scope: Provide engineering design services to construct parallel taxiway; construct stub taxiway to north general aviation apron; construct corporate apron and connecting taxiway; install medium intensity taxiway lights with separate circuits and regulator; replace visual approach slope indicators with PAPI-4 Runway 17-35.

The DBE goal is set at 9%. TxDOT Project Manager is Alan Schmidt, P.E.

Future items for design services within the next five years may include:



Extend Runway 1500 ft., environmental assessment, extend parallel TW, relocate Instrument landing system and PAPI-4, and extend MIRLS.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, project narrative and criteria for evaluating engineering proposals are available online by selecting "Denton Municipal Airport" at:

[www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm)

The proposal should address a technical approach for the current scope only and provide relative experience for the future scope items. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, Phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

<http://www.dot.state.tx.us/avn/avn550.doc>

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Note: The form is an MS Word template.)

Please note the new format for submission of a proposal for these services. Qualifications statements will not be utilized for this project. This will be a submission of a limited proposal for engineering services. The form AVN-550 must be utilized. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page.

**Six** completed, unfolded copies of Form AVN 550 must be postmarked by U. S. Mail by midnight **Thursday, February 12, 2004** (CDST); Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on **Friday, February 13, 2004**; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. (CDST) **Friday, February 13, 2004**; hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Deason.

The consultant selection committee will be composed of local government members.

The final selection by the sponsor's committee will generally be made following the completion of review of proposals and/or interviews. The committee will review all proposals and rate and rank each. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Amy Deason, Grant Manager, or Alan Schmidt, P.E., Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200400216

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: January 14, 2004

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### How to Use the Texas Register

**Information Available:** The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following a 30-day public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Open Meetings** - notices of open meetings.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back

cover or call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the TAC, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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